

TREATMENT - - RIGHT TO
PROMPT AND ADEQUATE
THE LAW

Each patient shall... "Have a right to receive **prompt and adequate treatment, rehabilitation and educational services** appropriate for his or her condition..."
§ 51.61(1)(f), Wis. Stats. [Emphasis added.]

"All patients shall be provided **prompt and adequate treatment, habilitation or rehabilitation, supports**, community services and **educational services** as required under s. 51.61(1)(f), Stats., and copies of applicable licensing and certification rules and program manuals and guidelines." DHS 94.08, Wis. Admin. Code [Emphasis added.]

DECISIONS

1. The **alcohol treatment program** did **not require** the individuals to **attend Alcoholics Anonymous (AA)** or the steps that have religious aspects. Thus, his right to be freedom of religious worship was not violated. (Level III decision in Case No. 98-SGE-02 on 10/13/98, upheld at Level IV.)
2. A **county found** a 17-year old **ineligible for developmental disabilities services**. She had been diagnosed as having a developmental disability at the age of 6 months. At the age of 12, she was diagnosed as autistic by a multi-disciplinary team of professionals. **Autism is developmental disability** that is a **life-long condition**. The question was whether or not she met the eligibility threshold of a 30% or more functional limitation in at least two of five areas of skills. The county conceded she met that threshold in the area of "self-direction and independence". The records indicate that she also meets the threshold in the area of "self care". Thus, she should have been eligible for the county's programs. Her **right** to prompt and adequate treatment **was violated** by the county's denial of her eligibility. (Level III decision in Case No. 98-SGE-03 on 11/10/98.)
3. A complainant **claimed** on appeal that "**alcoholism is not a disease** and that there is not treatment for it." The Level IV decision pointed out that the state Bureau of Substance Abuse Services developed a paper titled, "**Disease concept of Alcoholism**" and that numerous national and international organizations and associations define and classify alcoholism as a disease. The decision also pointed to statistics showing that, although no form of treatment can guarantee 100% success, there is a **high rate of success** for post-treatment abstinence with **post-discharge support group** utilization. (Level IV decision in Case No. 98-SGE-02 on 1/22/99.)

4. A client was **deprived of one of her medications** just prior to taking a long trip, due to a series of **errors and omissions** on the service provider's part. This was a **violation** of her right to prompt and adequate treatment. (Level III decision in Case No. 00-SGE-02 on 6/17/00, upheld at Level IV.)
5. A mother complained that her **son's condition was worsening** since his medications were discontinued. Her son's **doctor was on maternity leave** and the service provider would not temporarily assign him to another doctor. She was instructed to call back the next month when the doctor was scheduled to return. The desperate mother put her son back on the discontinued medication, without any medical assistance. The service provider **violated** the son's **right to prompt and adequate treatment**. (Level III decision in Case No. 00-SGE-08 on 7/28/00, upheld at Level IV.)
6. Where a developmentally disabled young woman ended up in an acute inpatient mental health setting, it was **appropriate** for the Level I Client Rights Specialist to **recommend** a potential "**crisis intervention plan**" for her in case the situation arose again. Such an approach is an element of ongoing quality assurance on the part of the County program, too. (Level III decision in Case No. 99-SGE-07 on 1/3/01.)
7. When a patient raises treatment issues, it is **not sufficient** for the Client Rights Specialist to **simply note** the **response** of the patient's attending **physician**. Further investigation may be required. (Level III decision in Case No. 99-SGE-12 on 1/3/01.)
8. A client's mother filed a **written complaint** on his behalf about the treatment he was receiving from his doctor. She was **referred to the doctor**, instead of the Client Rights Specialist. Since this was a formal complaint, the **doctor had a conflict of interest** and it was inappropriate to refer the matter to him. (Level IV decision in Case No. 00-SGE-08 on 2/21/01.)
9. A client complained that a Community Service Provider (CSP) had not done enough to get him **re-involved** in a local **community center**. This was considered part of his right to reasonable access to community activities. The grievance was resolved by an agreement between the CSP and the client that the CSP would assist him with an inter-personal problem-solving protocol that would hopefully enable him to return to the community center. (Level III decision in Case No. 00-SGE-12 on 8/6/01.)
10. A woman complained about her therapist and the **quality of services** she received. The allegations included concerns about the therapist's professionalism, timeliness, and the large amount of personal information and opinions that were communicated to her during therapy sessions. In a non-secure treatment setting, a therapist's sharing personal information with the client can help to build the relationship by allowing the therapist and client to relate to one another. However, the therapist and patient here seemed to have divergent opinions on social, political, and religious issues. Thus, in this case the **sharing of personal information** may have **compromised** the quality of the **therapeutic relationship**. It seems to have detracted from the client's ability to

relate to her therapist or discuss details of her treatment issues with the therapist. This seems to have occurred both because of the content of the information and the frequency with which it was shared, leaving the client less time to address treatment needs during the therapy sessions. The client did not verbally express her disagreeable response to the sharing of this information to the therapist during sessions. This is unfortunate because the nature of their dialog may have changed if this concern had been clearly stated early in the relationship. However, this is more of a **personality conflict** rather than a patient rights issue. Thus, this **does not rise** to the level of a patient rights violation. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)

11. A woman complained about her therapist because of **cancelled appointments**. The Level I decision found that her right to receive prompt treatment was violated by the high number of cancellations. The service provider implemented a formal plan and consistently followed up on it to reduce the number of cancellations. It was found at Level III that the frequency of cancellations did rise to the level of a patient rights violation and the Level I finding was upheld. The **actions taken** by the service provider remedied the rights violation. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)
12. A patient wanted to **bring a friend** to her **therapy sessions**. The service provider agreed that there are times that it may be appropriate, especially if the person is a primary support person for the client. Bringing another person to a therapy session **requires a signed release** from the patient. Since the requested remedy was provided, this issue was considered resolved. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)
13. A patient **threatened to kill** his wife, her boyfriend and his **therapist**. The transitional living facility he was in was justified in not allowing him to be re-admitted. (Level III decision in Case No. 01-SGE-06 on 10/18/01.)
14. A patient wanted to continue the individual therapy she had received for 9 years, but the service provider shifted to only doing **group therapy** with her. She had been made aware months in advance of the upcoming change in services. The treatment team agreed that this change was appropriate for her treatment needs. Thus, her right to treatment and her right to be free from arbitrary decision-making were not violated. (Level III decision in Case No. 01-SGE-09 on 3/27/02.)
15. A patient's treatment plan focused on the **patient's suicidal ideation** and safety. His doctor developed the plan based on the information he had at the time. Where the patient claimed, at a much later date, that he lied to the doctor, his right to prompt and adequate treatment was not violated. (Level IV decision in Case No. 99-SGE-05 on 3/29/02, upholding the Level III.)
16. A **PRN** ("as indicated") order **does not mean** the patient will receive the medication **upon demand**. A **qualified medical professional**, such as an RN, must make the **clinical decision** as to whether or not it is appropriate for the patient, based on an assessment of the patient's condition at the time. (Level IV decision in Case No. 99-

SGE-05 on 3/29/02, upholding the Level III.)

17. A complainant raised issues regarding the “**couples therapy**” he and his wife received. At **Level II** of the grievance process, it was concluded that the **complainant was not a client**, in the context of therapy that was provided, and thus did not have access to the grievance process. At Level III, it was concluded that the complainant was a patient by definition since he was referred to as such numerous times in the treatment records, **had his own diagnosis**, and had a **joint “treatment plan” with his wife**. Thus, he had access to the grievance process like any other “patient”. (Level III decision in Case No. 00-SGE-11 on 4/30/02, dismissed at Level IV for lack of standing to appeal because the ruling was in his favor at Level III.)
18. A grievance must be filed within 45 days of the occurrence of the event or circumstances or of the time when the event or circumstances “should reasonably have been discovered” or whichever comes last. Here, a minor’s prior physician apparently **misdiagnosed** him. The minor was **later correctly diagnosed** and **appropriately treated** during a stay at a state mental health facility. His parents filed a grievance about his original misdiagnosis seven months after his discharge from the state facility. The grievance was not timely filed. The program director’s refusal to accept this late complaint was an exercise of his discretion. He could have accepted the complaint, but chose not to. He did not abuse his discretion. In fact, there would have been little point in accepting it since the doctor in question was no longer working for the program. (Level III decision in Case No. 03-SGE-01 on 7/16/03.)
19. In general, the treatment decisions of professionals are afforded “**due deference**” by peers and by the courts. However, if a treatment decision “**departs from professional judgment**”, the patient’s right to treatment may have been violated. A “departure from professional judgment” may be evinced in any of three ways: a) where the evidence suggests that the professional exercised **no judgment** at all; b) where the individual was **not qualified** to make the judgment; or c) where a decision was made on an **impermissible basis** (e.g., as “punishment”). (Level IV decision in Case No. 02-SGE-04 on 9/19/03.)
20. There must be **sufficient evidence** to show it was **more probable than not** that a **doctor departed from professional judgment** in his prescribing medication to a patient after a phone call with her. Such evidence would have to come in the form of a **second opinion** from a professional of equal or greater standing than the doctor. Where there was **no such evidence** presented, the finding of a **rights violation** at Level III will be **overturned**. (Level IV decision in Case No. 02-SGE-04 on 9/19/03, overturning the Level III.)
21. In a situation where a **suicidal patient** has been put on a **new medication**, then **Cancels her next appointment** with the doctor, the **clinic has a duty** to at least have someone review the situation to see if follow-up contact with the patient is necessary. There was **no evidence** that this was done here. While it could be assumed that, as a voluntary patient, she was exercising her right to discontinue treatment, there should

have been some determination made as to whether or not to contact her. The clinic thus **violated** the patient's **right** to prompt and adequate treatment by not making that determination. (Level IV decision in Case No. 02-SGE-04 on 9/19/03.)

22. Patients have the right to have their **care and treatment coordinated** with **other treatment staff** who are involved in their care and treatment. A doctor ordering a change in a patient's medication must ensure that other members of the patient's treatment team are **informed about the new medication** and the **expected benefits** and **potential adverse side effects** which may affect the patient's overall treatment. (Level IV decision in Case No. 02-SGE-04 on 9/19/03.)

23. Where a **doctor knew or should have known** that his patient was **seeing other professionals** involved in her care, the doctor has a **duty** to at least **attempt to inform** the other therapist involved of a change in medication. If the patient's consent is required, the doctor should ask for it. Where no such attempt was made here, the doctor violated the patient's rights. (Level IV decision in Case No. 02-SGE-04 on 9/19/03.)

24. A mother believed a **therapist acted unprofessionally** in working with her daughter by **not reporting various risky behaviors** in which her daughter was engaged. The therapist was aware that her daughter tried to commit suicide, purposely cut herself many times, used illegal drugs, and engaged in underage sex with multiple partners. The mother thought the therapist should have reported all these incidents to proper authorities. She requested disciplining the therapist – including possible license revocation. The records indicated that the suicidal ideation expressed by the daughter was taken seriously. **Appropriate referral resources** were immediately **offered** to her parents. The daughter was also placed on a medication for depression. For the next seven subsequent sessions the therapist inquired about and documented the daughter's present mental status and thoughts of suicide or dying. Each entry includes some statement indicating that she was asked if she was seriously contemplating suicide or hurting herself. She responded that she was not having thoughts about suicide or hurting herself over the following months. Therefore, her **right** to prompt and adequate treatment **was met**. The therapist was **not obligated** to initiate social services intervention into her family life, **or to notify any other authorities**. (Level III Decision in Case No. 03-SGE-02 on 12/26/03.)

25. 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.)

26. **Methadone** is a **nationally recognized treatment modality** for **heroin addiction**. Where a patient has done well on a methadone program, staying drug-free for a period of 18 months, the **continuation of outpatient treatment** for her is **appropriate**. It is also the least restrictive alternative to inpatient treatment. (Level IV decision in Case No. 99-SGE-01 on 5/16/04.)
27. Someone in a **methadone treatment program** can ask for a **“fair hearing” only** when they have been **involuntarily terminated** from the program. (Level IV decision in Case No. 99-SGE-02 on 5/24/00.)
28. The individual’s right to treatment **includes specific protocols** as necessary to ensure health and sanitary living conditions. The treatment needs of the client need to be considered and clearly documented in the contract between the county and any contract agencies, with a plan for monitoring and updating those treatment goals. Any **barriers** to achieving these needs **must be documented**, the guardian must be informed, and a **plan to resolve** such issues needs to be **implemented**. These treatment protocols are an essential feature for the treatment and management of the client, and they are an **integral part** of the client’s right to prompt and adequate treatment. (Level III Decision in Case No. 03-SGE-04 on 6/15/04.)
29. The sister/guardian of a woman filed a grievance about the care the woman had received while she was living in her own apartment. She had been receiving supportive **home care services** from an **independent service provider** under a general **contract with the county**. The guardian alleged “abuse of a vulnerable adult” because the woman’s apartment was not kept clean by the contractor and was “unlivable due to filth”. The contract contained no specific requirements, but there was a list of duties for the staff who visited her apartment. One duty was to clean the apartment weekly. During one particular period, the contractor’s employees did not complete many of the required items and the apartment became very dirty. Instead, they spent the time **providing companionship** to the woman. Regardless of her desire for companionship, the employees were responsible for keeping the apartment clean. Whenever possible the caregivers should be making sure the task list is completed while working with the client to model those skills, and to create a social situation where tasks can be completed together and in a way that is therapeutic for her by reinforcing daily living skills. The contractor violated her right to a humane environment. (Level III Decision in Case No. 03-SGE-04 on 6/15/04.)
30. The individual’s **right to treatment** includes specific **protocols** as necessary to **ensure health and sanitary living conditions**. The treatment needs of the client need to be considered and clearly documented in the **contract** between the county and any contract agencies, with a **plan for monitoring and updating** those treatment goals. Any barriers to achieving these needs must be documented, the guardian must be informed, and a plan to resolve such issues needs to be implemented. These **treatment protocols** are an **essential feature** for the treatment and management of

the client, and they are an **integral part of the client's right to prompt and adequate treatment**. (Level III Decision in Case No. 03-SGE-04 on 6/15/04.)

31. A **psychiatrist** prescribing the medications has the **ultimate authority** to make **individualized decisions** for each patient. Individualized decision making is a key element for providing prompt and adequate treatment services appropriate to each individual patient's condition. While the majority of patients may not be suitable for a full disbursement of their medications, psychiatrists and treatment providers need to recognize individuals who are stable and consistent with their treatment programs and accommodate their request for dispensing increased amounts of medications at one time accordingly. (Level III Decision in Case No. 03-SGE-08 on 7/14/04.)
32. The primary rationale for the **proposed change in vocational services** for a client was **economic**. The county Health and Human Services program faced **increasing waiting lists** for people who need services while having **less fiscal support** to provide those services. In the face of a decreasing budget, the HHS was looking at areas where money could be saved. The **costs** of continuing this client's current vocational service provider were **considerably more** than other, **similar providers** in the area. It was **reasonable** for the county to **consider cutting costs without cutting programs**. The client rights question was whether or not the other providers would be able to offer **like services** that **adequately met** the client's **individualized needs** and supported her right to receive **prompt and adequate treatment** appropriate to her condition. It was found that the support services the other vocational provides could offer would be **comparable**. The client would continue working in the same settings at the same times, and with a support person available for the same amount of time. The changes would necessarily include different persons providing those services and doing so under a different organizational structure. However, the vocational services would essentially be the same under the county's proposal. The county's request that the client choose between two other, less expensive, vocational services providers was reasonable and fair. The **need to serve as many clients as possible outweighs the potential benefits of one individual** to continue receiving services from a **more costly service provider** than is necessary to provide support services in a similar manner that other agencies may provide in the same setting. Thus, requiring the client to choose between the two less expensive of three possible providers was not a violation of her rights. (Level III decision in Case No. 03-SGE-09 on 4/11/05)
33. Clients throughout the state receive **different services** from **different providers** who work together as parts of the service delivery system. The key to **maintaining quality services** and an **effective continuity of care and treatment** is the use of effective **communication protocols** between agencies. All agencies involved are expected to communicate and cooperate for the benefit of their clients and in accord with the right to provide prompt and adequate treatment and excellent continuity and coordination of services. (Level III decision in Case No. 03-SGE-09 on 4/11/05)
34. A client in need of a **very specific type of therapist** alleged that the county department of community programming was not coordinating her services adequately. While some

of their correspondence and efforts to assist her could have been more timely, **she was receiving** treatment during the time she allege the lack of coordinated services. This situation **did not rise** to the level of a patient rights violation. (Level III Grievance Decision in Case No. 04-SGE-07, affirmed at Level IV on 8/15/05)

35. 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. The agency the psychiatrist worked for gave the client adequate notice and time to find a replacement psychiatrist and also suggested possible alternatives. The client was also appropriately referred back to his own county. The client's rights were not violated. (Level IV decision in Case Nos. 05-SGE-06 and 05-SGE-08 on 12/15/05)
36. An outpatient mental health client believed **she needed financial counseling** and that this should have been brought to her attention by her therapist. While it is recognized that clients in the midst of stressful situation often lack the insight to identify these kinds of needs on their own, this allegation **does not rise** to the level of a patient rights violation. The treatment she was receiving was for psychological issues. It was **reasonable** for her therapist to believe that the **client could identify** and address her **financial concerns** without explicit direction from her therapist. (Level III Grievance Decision in Case No. 05-SGE-12 on 5/16/06)
37. The **adequacy** of the treatment a client received during the last six months of treatment was difficult to ascertain. Treatment records were minimal, the treatment occurred years ago in the past, and there are some differences of recollection between the client and the therapist. However, based on all available information, it seemed **likely** that the therapist was providing adequate treatment based on **her perception** of the client's treatment needs. While it is carefully considered that the **client did not agree** with the therapist's perception of her treatment needs nor the manner in which treatment was provided, it is difficult to prove that the treatment was not adequate based on the available facts. While it was recognized that the treatment she received was **not optimal**, there was **insufficient evidence** to **substantiate** the allegation that the treatment was **not adequate**. (Level III Grievance Decision in Case No. 05-SGE-12 on 5/16/06)
38. Ideally, **treatment** should be provided in the most **integrated** and **comprehensive** manner possible. While each treatment professional may only act within the scope of their own professional capacity, communication between professionals (with the client's consent) is an option. **Professional collaboration** can help provide an **integrated mind/body perspective**. In a situation where a client is in a state of emotional or psychological distress, it may be appropriate for a therapist to request the client's consent to communicate with her other treatment professionals, such as her gynecologist. This is particularly pertinent when the client may lack insight or the ability to process all facets of medical or psychological information at the time. However, it did not rise to the level of a rights violation where there were indicators that the client's physical health care needs were being met and the client desired confidential services.

In this situation, it was **not necessary or appropriate** for the therapist to request a release to **talk** with the client's **other medical professionals**. Identifying a client's physiological health care needs is not an expectation or responsibility of a psychotherapist. (Level III Grievance Decision in Case No. 05-SGE-12 on 5/16/06)

39. A diagnosis made by an independent, outpatient clinician was that **clinician's opinion**, which **cannot be challenged** in the **grievance process**. The client has the right to get a **second opinion** if she disagrees with the diagnosis. (Level IV decision in Case No. 06-SGE-09 on 9/27/06)
40. A client complained about **being refused services** by the **psychiatrist in her small home town**. She was being provided those services in a larger, nearby city, but she had transportation problems. Records indicated that she had originally requested that her services be transferred to the provider's outpatient department in the city, **blaming her local psychiatrist for all of her problems**. Later, she wanted to return to that psychiatrist, but **he refused to take her back** as a client. Considering the history between them, **it was appropriate** for the psychiatrist to refer her to another service provider. When the **psychiatrist/client rapport was irretrievably broken, referral to another psychiatrist was warranted**, even if that meant the client had to find transportation to the new provider a few miles away. (Level IV decision in Case No. 06-SGE-14 on 8/16/07)
41. A patient's mother felt that the **outpatient drug treatment program "failed" her son** by **failing to diagnose his depression**. The son ended up requiring inpatient treatment. However, according to his outpatient treatment records, the son **did not appear to present with any depressive or mood disorder** at the time. By his own account, **he did not report feeling depressed, tired, or sad**, as evidenced by the questionnaire he completed on admission. Although the clinic did not diagnose him with depression during his first year of outpatient treatment, the evidence indicated that **a thorough assessment was conducted**. Based on the documentation, the **lack of diagnosis did not constitute a violation** of his right to receive adequate treatment appropriate to his condition. (Level III decision in Case No. 07-SGE-07 on 4/2/08)
42. At the time of a client's admission to an inpatient substance abuse facility, the agency **presented her with a treatment schedule** and had her sign a consent to the treatment program. From the schedule, it appeared that each day would offer a full day's worth of treatment programming to clients. However, **because of the timing of her stay** during the late-December holiday season, **much of the activities and treatment programming on the schedule did not take place**. It was concluded that **the client's right to meaningful informed consent to treatment was violated** due to the **inadequate information** provided to her on admission. (Level III decision in Case No. 09-SGE-03 on 8/05/09)
43. It was determined that the complainants' daughter's right to an **adequate assessment was violated** because the **psychiatrist did not review, consider, and include the past treatment approaches and records before the assessment**. It was also

unprofessional for the hospital not to admit the psychiatrist made a mistake by not reviewing the records that were submitted prior to the appointment. While it is understandable that a mistake can be made regarding records and electronic file sharing, the mistake should have been corrected as soon as it became known so that the treatment of the client need not suffer or be delayed as a result of the mistake. It was further concluded that her **right to a prompt assessment was violated** by the response to the parents' request for their daughter to see another psychiatrist. They were informed that a second assessment would not be able to take place until **five months later**. (Level III decision in Case No. 09-SGE-08 on 5/18/10)

44. A man whose adult son had been protectively placed with him as an Adult Family Home provider **requested to be reimbursed** from the county for the “**respite**” hours and mileage he had provided when the assigned respite staff did not show up to take his son out. The county's attempts to provide respite care were **made in good faith**. If some of the respite care staff did not work out, that does not mean the county violated his son's rights. The reimbursement issue is not grievable as a client rights issue. Rather, it is an issue between the provider/father and the county to work out. (Level IV Decision in Case No. 06-SGE-03 on 9/01/10)
45. **Screening, assessment and treatment planning for client-centered services should, when appropriate, include a determination of the likelihood that a client has co-occurring substance abuse and mental disorders.** Planning should also include gathering information and engaging in a process with the client that enables the provider to establish (or rule out) the presence or absence of a co-occurring disorder. Further, the provider should determine the client's readiness for change and engage the client in the development of an appropriate treatment relationship. Also, **a comprehensive plan should be developed and matched to the individual needs, readiness, preferences and personal goals of the client.** (Level III decision in Case No. 10-SGE-08 on 12/21/10)
46. A mother felt that her teenage son **should have been evaluated for brain damage.** The evidence indicated that the hospital made reasonable efforts to assess his conditions, within the purview of what their Adolescent Unit offered, and created a realistic treatment plan with him. **His treatment was “adequate”**, as required by statute. (Level III decision in Case No. 10-SGE-08 on 12/21/10)
47. 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)
48. Research indicates that **Clonazepam may increase suicidal thoughts.** Clonazepam in large doses could easily be used by someone to commit suicide and it was found that

a client had 90 excess pills. It was appropriate for his psychiatrist to be very concerned about his continued use of that drug. Taking him off that medication was a logical, professional response to the situation. Professional judgments such as that will not be second-guessed in the grievance process. (Level IV decision in Case No. 10-SGE-10 on 4/20/11)

49. It was **not arbitrary** for a provider to **deny** an adult client **transfer to the doctor of her choice** when that **doctor had expressed a wish to limit her new clients to minors only**. That would be a **valid reason to deny the request**. It is not a violation of patient rights for a provider to determine which doctors will see which patients, as long as the decision is rationally based and made in good faith. Any directives placed on what type of patients particular doctors see should be well documented. Doctors themselves may limit, within the provider's parameters, which patients they see based on their schedules and long-term career interests. (Level III decision in Case No. 11-SGE-02 on 06/27/11)
50. The fact that a client's Dialectical Behavior Therapy groups were partially led by individuals that had not completed advanced training did not mean that she received inadequate treatment. Staff credentials are a licensing and regulation issue and, in and of itself, would not constitute a patient rights violation. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
51. A patient complained that the Dialectical Behavior Therapy program she was in did not provide outcome information. The model DBT programs provide that information. A treatment program may deviate from the model on which it is based in order to accommodate the particular needs of the staff, facility, budget and patients. It is not a patient rights violation to do so. It was noted that this program did make changes so that such information would be available in the future. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
52. A patient felt she was not getting enough services and that the provider was denying her services as a direct consequence of her decision to reject the services that had been offered. The provider had offered all the services that they determined would be appropriate and helpful for the patient, according to her individual assessments. It is a positive treatment approach for a program to evaluate a patient based on that patient's specific needs and then, to make recommendations based on that evaluation. No rights violation was found. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
53. A patient felt that the doctor she initially met with should have informed her up front that his limited availability precluded him from treating her regularly. It is standard procedure for doctors to meet with patients in order to assess their needs before making a determination as to how much time that patient will require and whether or not their schedules will permit them to treat that individual. Therefore, the doctor did not provide inadequate treatment in declining to treat this patient. (Level III decision in Case No. 11-SGE-01 on 6/28/11)

54. It was not a patient rights violation to have an internal medicine specialist rather than a psychiatrist provide a patient her prescriptions, particularly since a psychiatrist initially evaluated her and provided a diagnosis and prescription recommendations. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
55. A five week delay between a client's leaving one Dialectical Behavior Therapy (DBT) group and beginning another was unavoidable and was not a patient rights violation. Treatment providers must stagger group start-dates so that one begins when another one is finished. Since the client left the first group before it ended, a delay was inevitable. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
56. Patients' right to prompt and adequate treatment is **balanced against the provider's right to terminate services for non-payment**. (Level III decision in Case No. 11-SGE-06 on 12/02/11)
57. A person gains patient rights when they receive services for mental illness, substance abuse or developmental disability. Since appropriate services are initially determined at intake, complainant's services began on August 27, 2011. The **issue is whether the time between August 27, 2011 and August 29, 2011 was excessive, given the fact that she was suicidal**. The term "**prompt**" is not defined in the relevant statute or code, nor has it been addressed in the context of prior community grievance precedents. Her intake assessment from August 27, 2011 indicated that she was "able to contract for safety." **The seriousness of suicide cannot be understated. Unfortunately, services are not always available when they are most needed**, despite the best efforts of service providers. Doctors are in the best position and have discretion to make decisions about how to prioritize services based on availability and need. **Her doctor's professional judgment was utilized** in determining that **she was able to ask for help** and there was no evidence that the doctor made that decision based on an impermissible basis. Thus, **no violation of her right to prompt and adequate treatment** was found. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)
58. A patient claimed that **staff failed to provide her with adequate services** when she **was allegedly crying in her bathroom for up to an hour**. The physician's notes from that date indicated that **staff were aware of her mental state and were addressing it** according to professional standards of care. **If staff did not come to her immediately while she was crying, it is not necessarily inadequate treatment**. Patients have a right to privacy in toileting and the bathroom is traditionally a place people expect privacy. Further, it is plausible that staff decided that venting her feelings in private was appropriate and therapeutic intervention was not required. **No violation** of her right to prompt and adequate treatment was found. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)
59. Unfortunately, **not every patient** that receives services for mental health **leaves treatment feeling equipped to handle adversity**. Sometimes that is due to the **failure to provide adequate services**. Other times that is due to an inability on the

client's part to process the information and assistance provided. No violation was found of her right to prompt and adequate treatment. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)

60. A patient complained about the **change in her medication dosage** while she was an inpatient. She felt that her doctor should have had more contact with her mother and her out-patient psychiatrist before he adjusted her medication level. She claimed she had been doing well on the level she had been on and that if her medication had not been changed, she would not have "suffered" as much during her inpatient stay and that stay would have been shorter. However, it was noted that the medication levels she was on before her inpatient stay were not well tailored to her needs since she was not doing well and, consequently, required hospitalization. Additionally, **she could have requested a second opinion** within the provider if she questioned her doctor's prescriptions. It was found that **her physician was acting within the professional standards of care** and did not violate her rights. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)
61. A patient had several complaints that stemmed from her alleged misdiagnosis by one of the provider's doctors. The patient was diagnosed with bi-polar II, which allegedly caused her to stop trying to conceive a child due to the medication that she was prescribed, to be denied for life insurance and to be denied for international adoption. **The patient alleged that the misdiagnosis of her condition amounted to inadequate treatment.** The patient had to show that it was more likely that not that the doctor failed to meet established professional standards of psychiatry to meet her burden of proof. **Doctors and treatment team decisions are given due deference in the grievance process.** The patient must submit evidence that shows a departure from professional judgement. No such departure was evidenced or even alleged. There was no violation of the patient's right to adequate treatment in this case. (Level III decision in 12-SGE-0006 decided on 11/14/2012)
62. A patient had several complaints that stemmed from her alleged misdiagnosis by one of the provider's doctors. The patient was diagnosed with bi-polar II, which allegedly caused her severe problems. The patient was entitled to seek a second opinion from another doctor within the provider. Further, the patient has the right to seek an outside medical opinion at her own expense. The second opinion should be reviewed by the provider and documentation should be made as to the results of the review. The patient sought a second opinion and obtained three letters supporting a different diagnosis. One of the second opinions was from the doctor who authored the bi-polar disorder entry in the DSM-IV, who **opined that it was absolutely clear that the diagnosis was in error.** The patient told the provider's doctor that bi polar disorder may run in her family and that the medication to treat bi-polar disorder was effective for her. It was held to be **equally likely that the diagnosis of bipolar disorder-II was an accurate or an inaccurate diagnosis.** Thus the patient did not meet her burden of proof to show that it was more likely than not that an inappropriate treatment decision was made. The provider did not violate the patient's right to adequate treatment. (Level III decision in 12-SGE-0006

decided on 11/14/2012)

63. A patient became upset with a staff member and was told to “settle down” in the following therapy session by the therapist, who was also the Director of the service provider. The patient left the session and slammed the therapist’s door. Staff felt threatened. At the next meeting the therapist told the client that there was a breakdown in the patient/therapist relationship and that the patient would be discharged. **There is no unconditional right to receive services from a provider. However, the decision to discharge a patient cannot be arbitrary.** To be non-arbitrary, a decision must be based on a legitimate treatment, management or security interest. Here, the termination occurred when hostility had already developed between the parties. Best practice would have been to document an attempt to reach a consensus for voluntary discharge. **However, the fact that both the patient and the therapist asserted that the patient/therapist relationship was no longer productive amounted to a legitimate treatment reason to discharge the patient.** No violation of the client’s rights was found. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
64. A patient complained about **termination of his services** by his provider. However, he was no longer receiving services from the program and had no desire to continue with them. Thus, even if his rights had been violated by the termination from that program, there was no remedy that could have been granted to him that would have rectified the situation. The State Grievance Examiner (SGE) opted to use her discretion to address this issue anyway in the Level III decision. The subsequent analysis of the situation led to the conclusion that **he had failed to meet his burden** of showing that his rights had been violated by the termination of his services. He provided no new evidence in his appeal to Level IV that would add sufficient “weight” to meet his burden of showing that his rights were, in fact, violated. (Level IV decision in Case No. 10-SGE-15 on 03/27/13)
65. A parent filed a complaint based on her belief that her daughter was being over-medicated by a County doctor. The County did not appeal the Level III decision’s findings of rights violations for the lack of informed consent and for inadequate documentation. Nor did the County provide any reply to the grievant appeal to Level IV. Thus, “mootness” was the only issue decided at Level IV. The Level III decision analyzed the grieving party’s allegation that the County doctor should have provided better documentation of his reasons for initiating a medication and adjusting the patient’s dosage. On two occasions, the County doctor failed to provide any reason or justification for increasing the dosage, including to a dosage that appeared to be double the approved dosage. Doctors’ decisions regarding medication were given significant deference in the grievance process. However, **doctors were still required to articulate the specific reasons for such decisions. This requirement took on even greater importance when a doctor may be deviating from accepted guidelines.** The required documentation not only protects the patient; it also protects the doctor and the County in the event concerns are later raised and the doctor’s judgment is scrutinized. The County doctor’s lack of proper documentation on at least two dates violated the patient’s right to have clear

documentation for the reason for the use of medication and for changes to the medication regimen. (Level IV decision in Case No. 12 SGE-0011 decided on 05/09/2013)

66. A patient grieved that he was put into the provider's Safety Management Level System (SMLS) in violation of his client rights. The patient was placed under a Chapter 51 commitment with court ordered medication. The patient alleged that he was not an appropriate candidate for SMLS because he was not suicidal. The patient was diagnosed with several serious mental health issues. **The provider stated that the SMLS was designed to encourage patients to participate by giving them greater freedom as they demonstrated their ability to be safe.** Initially patients were placed under the most protective and restrictive level of care and then progressed to greater freedom within the inpatient residence as they demonstrated that they were unlikely to harm themselves or others. Clients who may have been unstable and in danger of harming themselves or others were provided with the direct assistance that they needed immediately upon arrival at the provider. It was determined that **the Clients right to adequate treatment was not violated by placement on the SMLS.** (Level III decision in Case No. 12 SGE-0012 decided on 06/11/2013)
67. A patient with a history of anxiety, major depression, prior suicide attempts and substance abuse was admitted into the hospital's inpatient psychiatry unit. She was put on one of the least restrictive precautionary treatment levels despite the fact that she had attempted to commit suicide in the past 48 hours prior to admission. The patient was given a butter knife with a meal and stabbed herself in the abdomen. The grieving party alleged that the patient's right to adequate treatment was violated when she was given metal utensils by the provider. This situation called for a safety level determination, which is more of a security and management decision than a medical decision. Therefore, it was not required that the patient get a second opinion in order to successfully challenge a provider's decision. **Generally, when a patient has been identified as suicidal, adequate treatment requires review and follow up even when a patient indicates by word or action that he or she is not currently considering suicide.** Here, the provider changed the admission process to ensure that clients admitted to the provider's psychiatric inpatient unit were not exposed to the same level of risk. The provider took meaningful steps to ensure that the problems identified by this case do not reoccur. Further, the patient told staff that she would request help if she felt unsafe, which ameliorated the circumstances that would indicate a possible violation. **The facts that the provider made and implemented a plan to resolve the problems presented by this case and that the client claimed that she would request help if needed tip the scales in favor of not finding a violation of the client's right to adequate treatment.** (Level III decision in 13-SGE-0004 decided on 11/5/2013)
68. A patient claimed that the provider violated her rights to adequate treatment and to be treated with dignity and respect. The patient found that the topics discussed in group therapy, including many disturbing past and present psychological problems,

were extremely upsetting. The patient alleged that this experience traumatized her and caused her anxiety, stress and depression. The **patient has the burden of proof to show that his or her allegations are more likely than not (more than 50% likely) to be true in order to prove wrongdoing.** Thus, the patient had to prove that it was more likely than not that the client's right to adequate treatment was violated when the group therapist discussed personal matters in therapy. The client claimed that a nurse stated that the provider's services were inadequate, but this was not corroborated by any documents provided or by the provider's staff. **Even if the nurse's statement corroborated the grievant's claims, it would not prove that it is more probable than not that the group session was inadequate treatment or that other aspects of the services received by the client were so poor as to rise to the level of inadequate treatment.** Similarly, the patient provided no supporting evidence that the group therapist directly caused her problems or that the alleged mental or physical problems existed. Self-reported evidence standing alone is not generally sufficient to meet the patient's burden of proof to show wrong doing by staff. (Level III decision in 13-SGE-0006 decided on 12/18/2013)

69. A patient alleged that her right to adequate treatment was violated when she was not given psychological testing to determine her appropriate diagnosis. However, **she did receive the services deemed appropriate by treatment staff while she was receiving services. The grievant was not receiving services long enough to have the testing completed and did not pursue the steps necessary to have the testing done within the 24 hours or less that the grievant was receiving services** from the provider. Further, the program manager explained how the patient could get the desired testing done and the client did not pursue those steps. No violation of the patient's right to receive adequate treatment was found. (Level III decision in 13-SGE-0006 decided on 12/18/2013)
70. A patient alleged that treatment staff communicated to the patient that if she did not withdraw a complaint her services could be terminated. Her husband's therapist admitted making a statement to the effect that the client and her spouse could be discharged if the problems they were discussing were not resolved. **Patients have the right to be treated with individuality by all employees of providers of health care with whom they come in contact.** In this matter the client should not have been included in the therapist's warning about potential termination because her relationship with the provider should not have been compromised by repeatedly complaining about staff. **Her case was lumped together with her husband's, which violated her right to individualized treatment.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)
71. A patient filed a grievance stemming from a disagreement between the patient and the therapist about whether the client should be tested for PTSD. The patient indicated to his therapist that conflict caused him intense emotional stress. The patient alleged that later he and the therapist got into a verbal fight. Evidence showed that the therapist told the client that he was not giving the patient a PTSD

test because he thought that the patient was trying to get on SSDI, which was causing the patient to be ambivalent about getting better. It was determined that, **although it was upsetting to the patient, nothing that the therapist said was a violation of the patient's dignity and respect or amounted to inadequate treatment.** Although the client felt that the therapist's statements were especially upsetting to someone who had PTSD, **the threshold for a violation of the right to dignity and respect and to adequate treatment was not met by the circumstances of this case because the therapist did not believe that the client had PTSD and because such a determination was within the therapist's discretion.** (Level III decision in 14-SGE-0002 decided on 11/19/2014)

72. A patient filed a grievance because his therapist failed to conduct a PTSD evaluation on the patient despite the patient asking several times to be evaluated for PTSD. The patient alleged that the therapist did not come right out and refuse to do the evaluation but instead employed other approaches, such as cognitive behavioral therapy, in their sessions. **The decision to evaluate (or not) a client for a particular diagnosis is within the professional discretion of a trained therapist. However such decisions must be based on legitimate treatment, management or security reasons. The case notes disclosed that the therapist had a legitimate reason to not test for PTSD, namely that the client was seeking a PTSD diagnosis to unfairly access SSDI.** The fact that another therapist later diagnosed the patient with PTSD did not prove that the therapy was inadequate or that the decision not to test the patient was arbitrary. (Level III decision in 14-SGE-0002 decided on 11/19/2014)

73. A patient alleged that his doctor often missed their weekly meeting. The doctor did not show up for 4 of the 13 scheduled meetings and had to leave early from several others. The patient also alleged that he had to remind his doctor of the medications that he was prescribed. Finally, the patient alleged that the doctor prescribed him a medication that caused negative sexual side effects in him despite an agreement that the patient would not take any medication with adverse sexual side effects. When a client complains about provider staff actions, the client has the burden of proof to show that the events complained about actually occurred. **The behavior complained about by the patient was not proven, but even if it had been they would not rise to the level of a violation of the patient's right to adequate treatment. It is not a rights violation for a doctor to miss meetings, need reminders about medications and to be in a rush. Furthermore, the evidence showed that the doctor discontinued the medication within a reasonable period of time when the side effects became intolerable to the patient.** (Level IV decision in 14-SGE-0001 decided on 12/22/2014)

74. A patient alleged that his rights to adequate treatment and to be free from arbitrary decisions were violated when his therapist failed to provide medication that he requested. The grievant indicated that he suffers from severe nerve pain. Evidence showed that three referrals were made to pain clinics. The patient did not attend

appointments with any of the suggested clinics and cancelled his psychiatric evaluation appointments. The patient stated that he did not pursue medication from the pain clinics because he could not get pain medication from the pain clinics due to the clinics suspicion that he may have been drug seeking. **Failing to provide the patient with pain medication upon his request was not a violation of his right to adequate treatment.** (Level III decision in 14-SGE-0003 decided on 6/26/2015)

75. A patient alleged that his rights to adequate treatment and to be free from arbitrary decisions were violated when the provider failed to give the patient sufficient information about his court ordered psychiatric evaluation. The patient cancelled his evaluation appointments and so he never had a chance to discuss his concerns with experts. The provider gave the grievant referrals to mental health evaluators who would be able to give the grievant information regarding the efficacy and purpose of the evaluation. The grievant may have felt unsafe even showing up to the evaluation appointments to collect information. Regardless, he cancelled the appointments. **An explanation of the purpose of the referrals was not required, but would have been best practices. No violation of the patient's rights to adequate treatment and to be free from arbitrary decisions was found.** (Level III decision in 14-SGE-0003 decided on 6/26/2015)
76. A patient alleged that his right to adequate treatment was violated when his therapist failed to provide medication that he requested. The facts presented in the grievance did not show that an emergency situation existed, which would have accelerated the time frame for the determination of the case. An emergency situation is defined in Sec. 94.02(14) as "a situation in which ... there is reasonable cause to believe that a client or group of clients is at significant risk of physical or emotional harm due to circumstances identified in a grievance." **There was no ongoing harm to the client from the provider because the client was no longer receiving services from the provider when the grievance was filed.** Further, although the client claimed that living without adequate pain medication could rise to the level of significant physical and emotional harm, in this case it was just as likely that the patient would suffer harm if he received the pain medication. The patient admitted that he did not pursue pain referrals for pain medication from clinic referrals because the providers suspected that he was drug seeking. (Level III decision in 14-SGE-0003 decided on 6/26/2015)
77. A patient alleged that his rights to adequate treatment and to be free from arbitrary decisions were violated when his therapist failed to provide medication that he requested. Due deference must be given to treatment professionals in making decisions regarding a patient's treatment plan. Such decisions will not be found to violate a patient's rights unless it is more probable than not that the determination was inappropriate. **In order to meet this burden of proof a patient must show that it was more likely than not that the treatment team failed to meet established professional standards of psychiatry when determining the patient's treatment recommendations.** The patient did not meet this burden.

There was insufficient evidence to show it was more likely than not that the grievant's treatment team failed to meet established professional standards. In fact, evidence in the grievant's treatment record shows that the medical staff made a considered professional judgement to deny pain medications to the grievant. No violation of the patient's right to adequate treatment was found. (Level III decision in 14-SGE-0003 decided on 6/26/2015)

78. A patient's mother grieved that the patient's rights were violated when an in-home ceiling lift was installed improperly. The patient was receiving services from the county for developmental disabilities. The lift was installed with the joists placed in the ceiling instead of in the attic. The patient's mother requested reimbursement for the cost of having the lift remounted in the attic. The County determined that the difference was cosmetic and refused to use County funds to pay for remounting it. The County could only use waiver funds if the item had exhausted its useful life or been rendered unsafe or unusable. If the lift did not operate correctly and safely it would constitute inadequate treatment services. There was no evidence to show that the lift was installed in an unsafe manner because the patient's mother had it reinstalled before taking pictures or operating the lift. There was no violation of the patient's right to adequate treatment where in-home equipment is not shown to be unsafe before it is reinstalled. (Level III decision in Case No. 15-SGE-0004 on 01/14/2016)

79. A patient had three therapy appointments cancelled and rescheduled in three weeks. The appointments were rescheduled without checking with the patient about the dates and times. The provider argued that the cancellations occurred because a provider was ill, a computer training for all staff was required and the therapist went on vacation. The right to adequate treatment is a broad right. However, the patient was able to go to the rescheduled therapy sessions. Cancellations can repeatedly happen through no fault of staff or patient. **There was no violation of the patient's right to adequate treatment because the provider rescheduled the appointments, although the best practice would be for the patient to be consulted about dates and times.** (Level III decision in Case No. 15-SGE-0003 on 01/14/2016)

80. A therapist requested that a patient sign **two releases of information so that the Director's wife (who was also an employee of the provider) could prove something to her friend.** The provider admitted that the patient lost trust in him upon his request for the second release of information. The requests were inappropriate and the loss of trust was an indication that the client/therapist relationship was jeopardized. The releases to speak to the therapist's wife and her friend about things shared during therapy sessions demonstrated a conflict of interest that compromised the therapist's objectivity in treating the grievant. **A violation of the grievant's right to adequate treatment was found.** (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)

81. A patient claimed that her right to adequate treatment was violated when a strip

search was conducted without warning upon her admission to an inpatient psychiatric hospital. The search was allegedly conducted with brusque orders. **Adequate treatment for mental health should include trauma informed care, especially for female patients admitted to inpatient units.** Such patients are likely to have experienced some form of sexual abuse. However, **adequate treatment refers to treatment and not to strip searches, which are a policy or procedure. The strip search did not violate the patient's right to adequate treatment.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

82. A patient was receiving services at a Community Based Residential Facility (CBRF) under a commitment order and an involuntary medication order. The **patient alleged that she was poisoned at the CBRF.** The grievant's only evidence was her claim that staff tried to poison her with tainted hamburger. No violation of the grievant's right to adequate treatment or her right to a safe environment was found because **the grievant's allegation was the only evidence presented that staff served the grievant poisoned hamburger.** (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)

83. A patient was receiving services at a Community Based Residential Facility under a Court's commitment order and an involuntary medication order. The patient requested a new psychiatrist. **The right to adequate treatment does not encompass a right to which-ever care provider a patient requests.** If patients were allowed to doctor shop it would undermine the provision of adequate care by incentivizing doctors to make treatment decisions based on the wishes of the patient rather than what is most likely to be helpful to the patient. **Clients have the right to obtain a different care provider at their own expense.** (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)

84. A patient grieved that he was wrongly denied Targeted Case Management (TCM), was wrongly discharged from Comprehensive Community Services and was misled about his ability to return to TCM. The undisputed evidence showed that the grievant was misinformed in court about his ability to return to TCM by the services Director. The patient refused to work with any of the three staff that were assigned to work with him and refused to work with two entire agencies. If the discharge was involuntary, which was not the finding in the case, the code requires that the documentation be specific, objective and adequately explain the reasons for any decisions made regarding the patient. Here, the alleged decision to voluntarily discharge the patient found adequate support in the record, although the records relied on were not as detailed or as organized as best practice would dictate. **Further, although the Director of the program indicated in court that the grievant could return to TCM as a matter of right, when in fact no such right existed, it was not a violation of the patient's right to adequate services to refuse to allow him to return to TCM. However, it is not best practices to promise such things, especially in a courtroom setting.** (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)

85. A patient grieved that he was wrongly denied Targeted Case Management (TCM), was wrongly discharged from Comprehensive Community Services and was misled about his ability to return to TCM. Here, a county provider is required to offer specific services to some clients. The Patient requested to be returned to a program and was previously found eligible for, TCM. He was not re-enrolled in TCM because the county claimed that he no longer fit the criteria for the program, although the county provided limited evidence to support this contention. Provider staff must be shown due deference unless it is shown to depart from professional judgement. Further, **counties are not legally required to provide CCS services, even if a person meets screening criteria. Furthermore, even if the patient would have been better off with TCM, the provider did exercise consideration in making the discharge decision, several attempts were in fact made to find a case manager that the patient could work with, and when he indicated that he no longer wished to work with the prescribed agency, he was discharged with referrals for services.** No violation of the patient's right to adequate treatment was found. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)

86. A patient grieved that he was wrongly denied Targeted Case Management (TCM), was wrongly discharged from Comprehensive Community Services and was misled about his ability to return to TCM. The discharge was held to be voluntary. However, **when a patient is discharged from CCS programs, the patient must be given written notice that includes (i) a copy of the discharge summary, (ii) written procedures on how to reapply for CCS and (iii) information on how the patient can submit a written request to have the discharge reviewed by DHS. The summary must include (a) the reasons for the discharge, (b) the patient's status, condition and progress, (c) documentation on the circumstances that would lead to a renewed need for services (to be created with input from the patient) and (d) for a planned discharge, signatures of the patient and staff.** There was a dispute as to whether the patient received any of this information. However, the information that the provider claimed to have provided was incomplete and was not addressed to the grievant. It was a violation of the patient's right to adequate treatment when the provider failed to create and send to the grievant the required documentation. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)

87. A grievant was working on his Driver Safety Plan and receiving outpatient AODA services through the county in order to have his driver's license reinstated. He attended a portion of his safety plan, but did not finish it. Evidence submitted by the grievant's doctor showed that the grievant was disabled and had severe restrictions on his ability to walk or travel long distances in a vehicle, which the Grievant alleged made him unable to transport himself to the clinic. His requests for telephonic or in house services were denied. In order to show that the provider provided inadequate treatment the grievant would have to show that it was more probable than not that the county departed from professional judgement in the delivery of treatment by requiring the grievant to transport himself to the clinic for AODA treatment. Further, such evidence regarding the location of services would have to come in from a

professional of equal or greater standing than the patient's doctor. However, **the right to adequate treatment cannot require a service provider to deliver services at a location away from the place where all other services are provided and where policy, safety management and treatment services are regulated and incorporated, even if such evidence were submitted.** It was found that the provider did not violate the patient's right to adequate treatment by requiring the patient to visit a clinic for AODA treatment even though it was difficult for the patient to access the clinic because of his physical limitations and place of residence. (Level IV decision in Case No. 16-SGE-01 on 12/15/2016)

88. A Patient grieved that her right to adequate treatment was violated when her therapist allegedly misdiagnosed her condition. **Statements in a treatment record that render a diagnosis are deemed to be judgements based on professional expertise and are not open to challenge, unless the treatment decision "departs from professional judgment."** A departure from professional judgment may be evidenced in any of three ways: **(i) the professional exercised no judgment; (ii) the treatment provider was not qualified to make the judgment; or (iii) where the judgment was made on an impermissible basis.** Here, there was no evidence presented that there was a departure from professional judgment. Thus, there was no violation of the patient's right to adequate treatment based on the diagnosis determined by the professional treating her. **Treatment need not be optimal in order to be adequate.** (Level III decision in Case No. 16-SGE-04 on 4/20/2017)

89. A grievant claimed that her right to fair and adequate treatment was violated when her therapist did not answer her repeated 2 a.m. calls and emails until the next day. Evidence showed that the provider had a separate crisis line, but that the **therapist had previously provided the grievant with his personal contact information and used these avenues of communication with the patient.** There was no evidence that the patient was reminded of the crisis line during the one year plus that she was receiving treatment. If the provider had reminded the grievant of the crisis line in the six months prior to the crisis, included the number of the crisis line in his voicemail greeting or refused to give the grievant his personal contact information at all the risk to the grievant would have been lessened. **Since assistance with crisis is a service that the provider claims to offer and it failed to offer a clear path to that support, the patient's right to adequate treatment was violated in relation to the provider's response to the crisis.** (Level III decision in Case No. 16-SGE-04 on 4/20/2017)

90. A patient claimed that her right to adequate treatment was violated: when she was **not screened for domestic abuse during admission to an inpatient facility;** when the facility performed a **body search on her that was allegedly not trauma informed;** and when she was discharged 28 hours after requesting discharge, which is four hours more than the 24 hours stated in the provider's policy. **The right to adequate treatment requires reasonable levels of care within accepted professional standards, it does not require best practices.** However, treatment

must be individualized. There was conflicting evidence as to whether a domestic violence screen was completed. Since there were no obvious signs of abuse or coercion, the question became one of whether domestic violence screening should be routine for all incoming patients. **It would have been best practice to do a domestic violence screen in this case. However, even if the facility failed to do so, it would not have been a violation of the patient's right to adequate treatment.** Similarly, although it is best practices to use trauma informed care, failure to do so is not a violation of a patient's right to adequate treatment. Finally, the 24 hour policy in question provides an exception for weekends to ensure that a doctor can assess the patient's safety prior to release. Since the patient failed to claim that the additional four hours in the facility did her any harm and since there is an applicable exception to the 24 hour policy, no violation of the patient's right to adequate treatment was found. (Level III decision in Case No. 16-SGE-08 on 5/26/2017)

91. A grievant **claimed** that her right to adequate treatment was violated **where lab tests were processed improperly and showed illicit drug use.** The burden of proof was on the grievant to show that it was more likely than not that staff collected the drug test specimens incorrectly. The provider's description of collection procedures and chain of custody procedure were found to be credible. The provider also showed that there were six separate positive tests for three different illicit drugs. Finally, the fact that the patient's first positive lab results came 3 months after she started the program meant that the positive results stemmed from use while she was in the program. **The patient's right to adequate treatment was not violated by the provider's collection of her samples.** (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)
92. A grievant **claimed** that her right to adequate treatment was violated **where lab test results were improperly interpreted to show illicit drug use.** The burden of proof was on the grievant to show that it was more likely than not that staff did not accurately evaluate the results. The patient's independent medical expert urged that all of the positive drug tests be disregarded for a variety of reasons, including that the cut off for a positive cocaine test was too low. The State Opiate Authority confirmed that there is no standard cutoff for cocaine tests. The provider consistently applied the same cut off levels to all patients. The provider also showed that there were six **separate positive tests for three different illicit drugs.** Finally, the fact that the patient's first positive lab results came 3 months after she started the program meant that the positive results stemmed from use while she was in the program. The provider's cut-off levels were lower than some other providers' because the provider aimed to provide needed treatment to people before they get deeper into addiction. **The patient's right to adequate treatment was not violated by the provider's analysis of her samples.** (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)
93. A patient complained that her drug test samples were dated incorrectly, were analyzed by staff with an incorrect professional title (Doctor) and were submitted to

the lab 4 days after they were given. However, **no evidence** was submitted that **demonstrated that the delay would cause the results to be less accurate**. Further, **no evidence** was submitted that **tended to support that a mis-dated sample, or one that was collected by staff with an incorrect title would effect the results of the lab test**. Such **evidence would have supported an argument that the lab and provider testing standards were substandard**, and thus a potential violation of the patient's right to adequate treatment, but the argument was not adequately supported. (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

94. A patient claimed that she was **denied a shot of vivitrol** after she was wrongfully discharged from treatment following her alleged violation of program requirements based on inaccurate positive results for use of heroin, cocaine and morphine. The decisions of doctors are entitled to due deference by peers and the courts. However, if a treatment decision departs from professional judgement a violation of the patient's right to treatment may be found. A professional's departure from professional judgement may be shown in any of three ways: (i) evidence that suggests that the professional exercised no judgement at all; (ii) evidence that suggests that the individual was not qualified to make the judgement; or (iii) evidence that suggests that the judgement was made on an impermissible basis. In the case at hand, the patient had been discharged. **Generally, patients must be actively involved in AODA programming to receive a vivitrol shot**. The treating doctor then determined that one more shot along with 30 days of emergency service was appropriate. No violation of the patient's right to adequate treatment was found because the case became moot when the grievant received the shot. (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)
95. A patient complained that the facility violated her right to adequate treatment by incorrectly assessing, diagnosing and treating her. She contested her bill and also claimed that the provider violated her right to adequate treatment and to participate in her treatment and care by refusing to transfer her to a different doctor. No violation of the patient's right to adequate treatment was found in regard to her complaint about the length of time between her appointments because she could have exercised her ability to find alternate providers with earlier appointment dates. No violation of her right to adequate treatment was found in relation to her claim that her assessment was done incorrectly based on the following facts: her records from the appointment appeared to be filled out in a thoughtful and complete manner; the appointment did not take much less time than what is common for a psychiatric assessment done by a new practitioner within the same provider; and due deference must be given to professionals in their field of expertise. No violation was found of the patient's right to adequate treatment in regard to her diagnosis because the CRS consulted the provider's Medical Director who stated that the Nurse Practitioner's (NP) documentation seems appropriate for medication changes and diagnosis. Also, the documented evidence shows that the patient consented to the treatment and that she was scheduled for appropriate treatment. Insufficient evidence was submitted by the patient to show that the provider failed to provide adequate

treatment by refusing to transfer the patient to another nurse. The CRS stated that the manager offered her a second referral to a different provider. Regardless, patients have the right to adequate treatment but not to the doctor of their choice. (Level III, Case No. 17-SGE-03 III)

96. A patient complained when the provider discharged him from Outpatient and Prescriber services, changed his primary psychiatric diagnosis, and altered his Quetiapine dosage. It was determined that these treatment decisions were not in violation of the patient's right to adequate treatment as these decisions are given "due deference" in the grievance procedure and there was no evidence to suggest the staff decisions "depart[ed] from professional judgement." There were documented treatment reasons for the decisions made on behalf of the client. (Level III Decision in Case No. 19-SGE-04, upheld at Level IV)
97. A patient's mother complained that the provider was dismissive of her concerns regarding the patient's mental status, and did not follow up with the patient after the mother expressed her concerns. The complaint that the provider allegedly did not take the mother's concerns seriously was dismissed, since she was not the person receiving services and the grievance procedure was therefore not the proper forum. It was also determined to be more likely than not that the provider did follow-up with the patient after the mother had expressed concerns relating to the patient's mental status. The patient's right to prompt and adequate treatment was not violated. (Level III Grievance Decision in Case No. 18-SGE-01)
98. A patient committed suicide and the State Grievance Examiner chose to investigate whether the therapist treating the patient was within the professional standards for therapists who work with patients that are suicidal. It was determined that the therapist had not missed signals that the patient may be at imminent risk, nor did the therapist make assumptions that clouded the therapist's treatment decisions. Since treatment decisions made by professionals are given due deference, and it was not found to be more probable than not that the therapist departed from professional standards, the concerns did not rise to the level of a rights violation. (Level III Grievance Decision in Case No. 18-SGE-01)
99. A patient's family complained that their son (who was a minor) was wrongfully discharged, and as such, received inadequate treatment. It was found that there were problems between the family and therapist which made it difficult to reach the patient's treatment goals. The patient's family received a Discharge Summary without prior discussion that the patient would be discharged, and the summary did not show evidence of the decision-making process that ultimately led to the conclusion to discharge the patient. There were some informal messages sent between the family and provider of the possibility to discharge the patient, however there was not a formal written acknowledgement to this effect. It was determined that the provider was outside professional standards when discharging the client. Although it is not inadequate treatment to end services due to the parties inability to work together, there were nevertheless violations of the patient's right to adequate treatment as the clinic did not document specific and objective reasons for a major

treatment plan change such as discharge, did not attempt to create a written acknowledgement between the provider and family that the patient's treatment goals could not be met, and did not assist the patient to set-up alternate services for the patient prior to discharge. (Level III Grievance Decision in Case No. 18-SGE-02)

100. A patient complained that the provider allegedly interrogated and emotionally abused her when discussing the potential diagnosis of bipolar disorder with the patient and then subsequently diagnosed the patient with Bipolar Disorder. It was found to not be a violation of the patient's right to prompt and adequate treatment when discussing the bipolar diagnosis with the patient. A violation of the patient's right to prompt and adequate treatment was also not found when the provider diagnosed the patient with Bipolar Disorder, as the documentation provided detailed the reasons for the change in diagnosis and the decision appeared to be individualized to the patient's symptoms. (Level III Grievance Decision in Case No 18-SGE-03).
101. A patient complained when a provider was unable to include free, immediate transportation, a psychiatric hospital that will have single room availability, an N95 mask, and immediate services from a medical doctor in her crisis plan. These requests were made due to the patient's immune disorder. The provider attempted to meet these needs by contacting 19 different psychiatry hospitals, but each hospital stated that they would not be able to guarantee any of the requests. It was not a violation of the patient's right to adequate treatment via the crisis plan because the provider created a crisis plan that suited the patient's needs with the resources that were available. It was also determined not to be a violation of the patient's right to adequate treatment when the provider did not apply the requested provisions to the crisis plan in an emergency situation, as the services that were already provided in the plan were the maximum services available, whether or not the patient was considered in an emergency situation. (Level III Grievance Decision, upheld at Level IV, in Case No. 18-SGE-05)
102. A patient's family grieved on behalf of the patient when a caregiver drove the patient, who is non-verbal and has severe autism and epilepsy, to an unplanned, undisclosed location for personal reasons for approximately one hour. The caregiver defensively informed the family that he took the patient to the grocery store, but told the provider that he was talking with a friend while the patient stayed in the car. The provider chose to believe that the patient was in the car while the caregiver talked with a friend in the driveway, and acknowledged that this was inappropriate and unprofessional. However, the provider did not find a rights violation, as they believed that the patient was not unsupervised during that time. It cannot be determined the exact details as the caregiver's integrity is questionable. Further, the patient could have been in severe danger or subject to abuse at the undisclosed location. It was determined that the caregiver departed from professional judgement by taking a highly vulnerable individual to an unknown location for personal reasons, not having the authority to take the client to an undisclosed location, and violating rules of employment; therefore violating the patient's right to prompt and adequate treatment. Additionally, the patient's right to a safe and humane environment and to

dignity and respect were violated as this put the patient in unnecessary danger and the caregiver did not consult with the guardians if this “errand” would be beneficial to the patient. (Level III Grievance Decision in Case No. 18-SGE-06)

103. A mother/guardian complained, on behalf of her adult son about a number of his rights having been violated at a day treatment service provider. No evidence was submitted to contradict the assertion that staff did not learn any of the 50 ASL signs that the participant knew, despite the fact that the grieving party provided them to the center. This is found to be a violation of the participant’s right to adequate treatment because it is contrary to the goal of greater independence and doing so would have given him a more meaningful way to participate in services. Recommendations were made to the provider to ensure that participant’s means of communication are utilized to the fullest extent that is possible in the present and future. The Level IV decision concluded that the provider had, in fact provided some evidence that staff had learned some of the ASL signs the grieving party had provided, and this portion of the Level III decision was overturned. (Level III Grievance Decision, overturned at Level IV, in Case No. 19-SGE-02)
104. A mother/guardian complained, on behalf of her adult son about a number of his rights having been violated at a day treatment service provider. In relation to the grieving party complaint that a staff person “had their eyes closed”, it is determined that, in fact, the staff person immediately responded to the grieving party when the grieving party spoke to him. Nor was any evidence submitted of harm to the participant due to the dozing of his one on one staff person on the couch next to him. While this finding cannot be generalized to other cases, in this case, no violation of adequate treatment is found from the actions of the staff person. (Level III Grievance Decision, upheld at Level IV, in Case No. 19-SGE-02)
105. A mother/guardian complained, on behalf of her adult son about a number of his rights having been violated at a day treatment service provider. The provider’s decision not to take the participant to the YMCA was found to be a logical and reasonable conclusion, due to his privacy needs, and did not violate the participant’s right to adequate treatment since there were alternative means for him to experience community in the day treatment center. (Level III Grievance Decision, upheld at Level IV, in Case No. 19-SGE-02)
106. A patient grieved when her new Prescriber would not refill her prescription without further diagnostic testing. The testing the Prescriber was requesting could not be completed with the provider, and the grievant was unable to find a different provider that would be able to complete the test. The grievant therefore did not get her prescription refilled. It was found to not be a violation of the patient’s rights as the Prescriber was within professional standards, adequately documented the reasons why he did not refill the prescription, and informed the grievant of this decision. (Level III Grievance Decision in Case No. 20-SGE-01)

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