

REFUSING MEDICATIONS AND TREATMENT - - CONSENT REQUIRED

THE LAW

“Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.”

§ 51.61(6), Wis. Stats. [Emphasis added.]

"A patient may refuse medications and any other treatment except as provided under s. 51.61(1)(g) and (h), Stats., and this section."

DHS 94.09(2), Wis. Admin. Code [Emphasis added.]

Each patient admitted or committed under this chapter shall...

"Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to **refuse all medication and treatment except as ordered by the court** under subd. 2, **or** in a situation in which the medication or treatment is **necessary to prevent serious physical harm** to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).
2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, the court shall, upon the motion of any interested person, and may, upon its own motion, **hold a hearing** to determine whether there is probable cause to

believe that **the individual is not competent to refuse medication or treatment** and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the **court shall issue an order permitting medication or treatment** to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s.51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s.51.20(5), except for the right to a jury trial.

3. **Following a final commitment order**, have the right to exercise **informed consent** with regard to all medication and treatment **unless** the committing **court** or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), **makes a determination**, following a hearing, that the **individual is not competent to refuse medication or treatment** or unless a situation exists in which medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s.51.20(13), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s.51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.
4. For purposes of determination under subd. 2 or 3, an individual is not competent to refuse medication or treatment **if, because of mental illness, developmental disability, alcoholism or drug dependence, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment**, and the alternatives to accepting the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual." § 51.61(1)(g), Wis. Stats. [Emphasis added]

“(4) Except in an emergency when it is necessary to prevent serious physical harm to self or others, no medication may be given to any patient or treatment performed on any patient without the prior informed consent of the patient, unless the patient has been found not competent to refuse medication and treatment under s. 51.61(1)(g), Stats., and the court orders medication or treatment. In the case of a patient found incompetent under ch. 880, Stats., the informed consent of the guardian is required. In the case of a minor, the informed consent of the parent or guardian is required. Except as provided under an order issued under s.51.14(3)(h) or (4)(g), Stats., if a minor is 14 years of age or older, the informed consent of the minor and the minor’s parent or guardian is required. Informed

consent for treatment from a patient's parent or guardian may be temporarily obtained by telephone in accordance with s. DHS 94.03(2m).

(5) A **voluntary patient** may refuse **any treatment**, including medications, at any time and for any reason, **except in an emergency**, under the following conditions:

- (a) If the prescribed treatment is refused and **no alternative treatment services are available** within the treatment facility, it is not considered coercion if the facility indicates that the patient has a choice of either **participating** in the prescribed treatment or **being discharged** from the facility; and
- (b) The treatment facility shall **counsel the patient** and, when possible, **refer the patient to another treatment resource prior to discharge**.

DHS 94.09, Wis. Admin. Code [Emphasis added.]

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]