

FILMED OR TAPED - - CONSENT REQUIRED

THE LAW

Each patient shall..."Except as otherwise provided, have a right **not to be filmed or taped**, unless the patient signs an **informed and voluntary consent** which specifically authorizes a named individual or group to film or tape the patient for a **particular purpose** or project during a **specified time period**. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is adjudicated incompetent, such consent shall be granted on behalf of the patient by the patient's **guardian**. [Emphasis added.]

"(1) No patient may be **recorded, photographed, or filmed** for any purpose except as allowed under s. 51.61(1)(o), Stats., and this section.

(2) A **photograph** may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the **patient's treatment record**.

(3) The informed consent **document** shall specify that the subject patient **may view the photograph or film or hear the recording prior to any release** and that the patient **may withdraw informed consent** after viewing or hearing the material."

DHS 94.18, Wis. Admin. Code [Emphasis added.]

DECISIONS

1. A father **wanted to audio-tape staff's meetings** where they discussed his son's treatment. The **facility refused to allow this**. This is **not a patient rights issue**. The only relevant patient right is the **right not to be filmed or taped**. The **facility offered to write up the outcomes** of the meetings for the father. This was a **reasonable resolution**, but the father refused to accept it. (Level III decision in Case No. 03-SGE-03 on 7/17/03)
2. A patient was issued a discharge notice when she refused to sign the clinic's general consent form. The patient was only receiving behavioral health services from the clinic, but this consent form was needed for the clinic's larger organization in order to bill for services and for liability coverage. The patient did not consent to being filmed or taped as stated in the form. The provider was made aware by the Department of Health Service agencies that the patient has the ability to refuse to be filmed or taped and removed that part from the consent form, prior to the patient's discharge. If the patient had been discharged without the removal of that section, the patient would have been retaliated against as she

would have been penalized for refusing to be filmed or taped, which is within her right to do. However, the grievant was never ultimately discharged and therefore no retaliation was carried out. (Level III grievance decision in Case No. 20-SGE-07)

[See: "Introduction to Digest-Date Last Updated" page]