

GRIEVANCE PROCESS - CREDIBILITY OF WITNESSES

The investigator can weigh each witness's **credibility** with regard to the issue at hand:

- (1) Were they in a position to actually witness the events?
- (2) Is the person generally reliable?
- (3) Do they have any reason not to be truthful about this matter?
- (4) Was their testimony consistent?
- (5) Was there any corroborating evidence?

When an assessment of credibility is made in order to resolve conflicts between evidence, the reasons that a particular account is considered more credible than not must be given, using factors such as those listed above.

- CRO Training materials

DECISIONS

1. A client claimed that his provider's Director **badgered him** about his relationship with a prior provider in the same community. Although it may have been appropriate to question the client about this under the circumstances, it was inappropriate for a Director to continue to pressure the client about it after the client asked her to stop several times. The **credibility** of both the client and the Director **were weighed** by the State Grievance Examiner in the Level III decision and it was **concluded that it was more likely than not** that the client's version of the events was accurate. A rights violation was found. That finding was supported by the evidence provided. (Level IV decision in Case No. 10-SGE-14 on 7/18/11)
2. A patient claimed a staff member did not treat her with dignity and respect. Her complaint could not be substantiated because it amounted to a "he said – she said" argument. The complainant had the burden of proof of the alleged staff wrongdoing. This **called for the weighing of the two parties' credibility**. Based on the written materials she provided, it was **found that complainant's description of events was credible**, but, if true, it did not rise to the level of a rights violation because it did not describe what the staff did to upset her, nor did it describe proof of that occurrence. Thus, she had not met her burden of proof and no violation of her right to respect and dignity was found. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)
3. A client was seen at the provider's emergency room for suicidal ideations and entered the inpatient mental health treatment facility at the hospital. The client claimed that the provider violated many of his client rights. The grievant **asked to speak to the patient advocate about his rights repeatedly and these requests were evaded by provider staff**. The patient claimed that he was never given an opportunity to speak

with any staff member at the provider who counseled him about his rights as a patient. Staff should be aware that when a patient asks to speak to a patient advocate they want to know about their client rights and should be referred to a client rights specialist (CRS). No person may deprive a patient of the ability to seek redress for alleged violations of the patient's rights by unreasonably precluding the patient from using the grievance procedure. The client had the burden of proof to show that it is more likely than not that his use of the provider's grievance procedure was hindered or even prevented by the provider. The State Grievance Examiner found that it was most likely that the patient did complain about wanting to be discharged and about wanting to see a patient advocate during his stay. The SGE also found it likely that **the provider did not direct the patient to a CRS during his stay. These actions violated the grievant's right to access the grievance procedure by unreasonably precluding the patient from using the grievance procedure.** (Level III decision in case No. 12-SGE-10 decided on 5/8/2013)

4. A patient alleged that her right to dignity and respect was violated when staff allegedly stared at her in an inappropriate and disrespectful manner on several occasions and staff from the hospital's bariatric program shamed her and lectured to her when she complained. The patient also claimed that staff of the bariatric clinic and the mental health clinic gossiped with each other about her with the result that she was denied bariatric surgery. The **patient failed to provide evidence that it was more likely than not that the staff stared at, shamed, lectured to or gossiped about her.** The patient did provide a great deal of information about her understanding of what occurred while she was receiving services, but she did not provide any corroborating evidence that the allegations were more likely true than not. **The patient was credible, but without more evidence, no violation of the patient's right to dignity and respect was found.** (Level III decision in 13-SGE-0006 decided on 12/18/2013)
5. A husband and wife were receiving therapy from different therapists employed by the same provider. The wife claimed that her husband's therapist kissed her hand as a response to the couple's decision not to continue with a complaint. The therapist claimed to have no recollection of kissing the patient's hand. If proved, **kissing a patient's hand would constitute a violation of a client's right to be treated with dignity and respect.** When a patient claims that a staff member violated his or her rights the burden of proof is on the grievant to show that it is more probable than not that staff violated a specific client right. If the testimony offered by the parties is contradicting and there is no other evidence, it is not possible for a patient to meet the burden of proof unless the patient is more credible than the other party. Here, the grievant was a witness to the incident, her testimony had been reliable and she had no reason to be untruthful in one complaint when she was truthful regarding all other complaints she brought forward. **The grievant's version of events was slightly more credible because the therapist has been found to have violated the client and her husband's dignity and respect on other occasions. A violation of the patient's right to be treated with dignity and respect was found.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)

6. A patient claimed that her husband's therapist, a staff member of the provider from whom she was receiving therapy, kissed her hand as a response to the couple's decision not to continue with a complaint. The therapist claimed to have no recollection of kissing the patient's hand. **The SGE must decide whether witnesses are truthful and accurate, or instead, testified falsely or were mistaken. The SGE must also weigh what importance to give to the testimony that is accepted as truthful and accurate. It is the quality of the testimony that is controlling, not the number of witnesses who testify. If the SGE finds that any witness has intentionally testified falsely as to any material fact, the SGE has discretion to disregard that witness' entire testimony, or as much of it as is found untruthful.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)

7. A patient claimed that her right to be treated with dignity and respect was violated when a strip search was conducted without warning upon her admission to an inpatient psychiatric hospital. The grievant alleged that at an informal grievance meeting **staff told her that she would not want to know what would have happened if she had refused the strip search. Actual or threatened retaliation is not allowed when a patient refuses to give or withdraws informed consent.** All staff persons present at the meeting denied that the statement was made. The grievant offered only her own testimony as proof of wrongdoing. The grievant had the burden to show that it was more likely than not that staff violated her rights. Further, the grievant's credibility was compromised because of the inconsistency arising when she initially characterized the search as a rectal cavity search and then characterized it as a visual search. Therefore, there was no violation to the patient's right to be treated with dignity and respect as a result. **However, if the patient had been able to offer more evidence that the statements were made it would have been a violation of her right to be treated with dignity and respect.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

8. The grievant's claim that he was blocked from grieving was unsupported by evidence other than his claims. The grievant's claim that staff made obstructive statements to him was **hearsay**, which is a statement introduced to prove the matter asserted. When evaluating hearsay the **credibility of the declarants can be considered.** The client told the State Grievance Examiner that he wished to grieve, changed his mind, and then changed his mind again. The Client Rights Specialist reported the same phenomena. **The patient's credibility was diminished by his waffling as to whether or not he wanted to file a grievance.** (Level III decision in Case No. 15-SGE-0006 on 7/11/2016)

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