

## GRIEVANCE PROCESS - MOOTNESS

[Note: The **concept of mootness** relates to **whether a decision needs to be made** when **circumstances have changed** by the time the matter comes before the decision-maker. In general, **there must be an existing “case in controversy”** in order for an investigation and decision to have **meaning**. When the circumstances or problems complained of have been remedied prior to the completion of the grievance investigation there is no reason for further investigation or a determination on the issue. For example, if a change in the patient's treatment plan or medication has resolved the issue originally complained of, there would be no further controversy and the complaint would be **moot**. The cases below illustrate this principle and those **special circumstances** where an **otherwise moot grievance may still be investigated and decided**.]

[Additional examples from Black's Law Dictionary:

- A case is "moot" when a determination is sought on a matter which, when rendered, cannot have any **practical effect** on the existing controversy.
- A question is "moot" when it presents **no actual controversy** or where the **issues** have **ceased to exist**.
- An action is considered "moot" when it no longer presents a justiciable controversy because **issues** involved have become **academic** or **dead**.
- A case is "moot" where the matter in dispute has **already been resolved** and hence, not entitled to judicial intervention **unless the issue is a recurring one and likely to be raised again** between the parties.
- A case becomes "moot" when the issues presented are **no longer "live"** or the **parties lack a legally cognizable interest in the outcome**.]

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## DECISIONS

1. A client complained about being on 1:1 supervision. During the Level III investigation, the client was **discharged** to her parents' home. It appeared that the facility had handled her grievance properly during her stay. **No further relief could be provided** and the allegations appeared unfounded. The matter was dismissed as being **moot**. (Level III decision in Case No. 04-SGE-03 on 9/25/04)
2. A patient **felt she was treated disrespectfully** by group leaders in a session. However, she was **no longer receiving services from that provider**. Since she was no longer dealing with the staff she complain about, **this issue was moot**.

**Even if a rights violation had been found, there was no remedy available to her at this time. (Level III decision in Case No. 11-SGE-01 on 6/28/11)**

3. 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 severely impacted her life. The patient alleged that her medical record had not been adequately changed to reflect the correct diagnosis. Although not even a misdiagnosis may be deleted from a medical record, the provider added a different diagnosis from two other doctors to the grievant's medical record. **The question remained as to whether or not the added materials were adequate. Therefore the case was not moot.** (Level III decision in 12-SGE-0006 decided on 11/14/2012)
4. A parent filed a complaint based on her belief that her daughter was being over-medicated by a County doctor. The Level III decision concluded that the issue of her medications was "moot" because the patient had already been returned to the dosage of the medication that her parent believed was appropriate and the patient was no longer receiving services from that doctor. The parent appealed to level IV. The parent claimed that the issue was not moot because she contended that the patient still suffered side-effects from the alleged over-medication. The level IV decision found that regardless of any residual effects of the patient's medications, **there was no other remedy that was available via the grievance process since she was now at a level of the medication that the grievant was comfortable with, and since the patient was no longer being treated by the doctor that the grievant believed over-medicated her.** Grievance procedure personnel do not have the authority to award damages or discipline staff. The Level III decision was upheld. (Level IV decision in Case No. 12 SGE-0011 decided on 05/09/2013)
5. A parent filed a complaint based on her belief that her daughter was being over-medicated by a County doctor. The Level III decision concluded that the issue of her medications was "moot" because the patient had already been returned to the dosage of the medication that her parent believed was appropriate and the patient was no longer receiving services from that doctor. Although the issue of excessive medication was moot, there were two other related issues raised by the grievance that were not moot. **There was an exception to the mootness doctrine when a grievance raised an issue of general importance to other patients who were still receiving treatment from the provider in question.** There were two issues of general importance relating to the County doctor's written documentation of medications that were raised by the grievance. **Although these issues no longer affected the grievant's daughter, these issues continued to affect patients receiving treatment from the County at that time.** Therefore, each of these issues had to be analyzed to determine whether they represented violations of patient rights. (Level IV decision in Case No. 12 SGE-0011 decided on 05/09/2013)

6. A patient brought several complaints against a provider which were consolidated into a single opinion. The patient was placed into the provider's care as a result of a Chapter 51 commitment. The grievances reflect a series of allegations that the provider violated the patient's right to a humane environment and to adequate treatment. The patient's grievances were properly handled in Level I and Level II. The patient was no longer receiving services from the provider. **There must be an existing controversy in order for a decision to have any meaning if a client is no longer receiving services from the provider. There is no need to continue an investigation into the matter if the client is no longer affected by the situation or if the relief sought has already been provided or cannot be provided because of a change in circumstances, regardless of whether a violation occurred.** The grievances were moot because the patient's concerns were based on very individualized care that he was no longer receiving from the provider when the Level III decision was being investigated. The grievances did not fall under any of the exceptions to the mootness doctrine and the complaints were dismissed as moot. (Level III decision in 12-SGE-0013; 12-SGE-0014; 13-SGE-0001; 13-SGE-0002 and 13-SGE-0003 decided on 07/23/2013)
7. A patient was discharged because the provider allegedly discovered that she was audiotaping her interactions with her therapist and provider staff without permission. The patient filed the grievance in the hopes that she would be able to start seeing the same therapist again. A case is moot when a determination is sought in a matter which, when rendered, cannot have any practical effect on the existing controversy. Here, a determination was unlikely to have a practical effect for either party because the patient was no longer receiving services from the provider. The provider had already changed its discharge procedure in a manner that addressed most of the concerns raised by the patient. **Since the provider cannot be forced to take on a patient via the grievance process, and since the provider had already made improvements to its discharge procedure, the case was found moot and none of the exceptions to the mootness doctrine were found to apply.** (Level III decision in 12-SGE-00017 decided on 8/22/2013)
8. 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 and had overdosed within the 48 hours prior to admission. The patient was given a butter knife with a meal and stabbed herself in the abdomen. The patient's husband brought substantive and procedural grievances on the patient's behalf. As a threshold matter, the SGE determined that the matter was not moot. A case may be dismissed as moot if a determination is sought in a matter which cannot have a practical effect on the controversy. In this case, **the SGE determined that the matter was not moot because it was otherwise likely to evade review, was of significant importance to other clients and was of general importance in that the investigation and analysis could assist the client in bringing closure to the matter.** (Level III decision in 13-SGE-0004 decided on 11/5/2013)

9. A patient who was receiving treatment for less than 24 hours claimed that the provider violated her rights to adequate treatment and to be treated with dignity and respect. The client was no longer receiving services from the provider, so the question arose as to whether any meaningful remedy could be provided via the grievance process. **The case was not dismissed as moot because the issues may be raised again between the parties and because the process of addressing the issues may help the client find closure.** (Level III decision in 13-SGE-0006 decided on 12/18/2013)
10. A patient grieved about a myriad of procedural and substantive alleged client rights violations by a provider. The procedural complaints we addressed in a separate Level III decision, 12-SGE-10, decided on 5/8/13. The allegations analyzed in 13-SGE-0008 were held to be moot. The provider had already participated in online training and waived any additional payments due from the grievant. Further, the patient was no longer receiving services from the provider and made no showing that she was experiencing any ongoing harm. **There was no additional remedy that could be provided by the grievance process.** (Level IV decision in 13-SGE-0008 decided on 01/21/2014)
11. A **therapist told a client that there was a breakdown in the patient/therapist relationship and that the patient would be discharged. The provider continued to provide medications to the patient.** The patient filed a grievance about several issues. Although the Level III decision could provide **no meaningful remedy to the client, the case was held to meet an exception to the mootness doctrine** because the of the parties' ongoing relationship and because the issues raised were of significant importance to the rights of current and future patients. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
12. A husband and wife grieved several issues around a therapy session where the therapist kissed the wife's hand as an expression of gratitude. Each filed separate grievances. The grievant in this case was the wife. The provider and the spouses had a dispute about how the grievants treated the provider's receptionist. Eventually, the therapist discharged the husband. The case was not moot because it met an **exception to the mootness doctrine due to the of the parties' ongoing relationship and because the issues raised were of significant importance to the rights of current and future patients.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)
13. A patient had several complaints that stemmed from how a provider allegedly mishandled the patient's insurance claim. The patient was no longer receiving care from the provider. However, **the case was not moot because some of the issues raised by the complaints may have otherwise evaded review and were potentially important to current or future patients.** (Level IV decision in 14-SGE-0001 decided on 12/22/2014)

14. 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 case met an exception to the mootness doctrine even though the decision could not have any practical effect on the controversy because the client was no longer receiving services from the provider. **Some of the issues raised by the case may have otherwise evaded review and caused current and future clients to have a negative experience with the provider.** (Level III decision in 14-SGE-0002 decided on 11/19/2014)

15. A patient alleged that his right to adequate treatment was violated when his therapist failed to write notes during treatment and when the therapist failed to provide/contact promised resources and/or referrals. The patient stopped receiving services from the provider prior to filing the Level III grievance. A case is moot if a determination is sought that cannot have any practical effect on the controversy, which would usually include when a client is no longer receiving services from the provider. **However, there is an exception to the mootness doctrine for cases where the issues raised could be important to other patients receiving services from the same provider, which was applicable in this case.** (Level III decision in 14-SGE-0003 decided on 6/26/2015)

16. A patient alleged that his right to confidentiality was violated when his therapist failed to address the inappropriate sharing of his medical records with outside healthcare and dental clinics. **The issue was held to be moot because the patient was no longer receiving services from the provider and because the evidence presented was insubstantial to show that the allegation was likely to be true and thus be of general importance or significant importance to other patients.** (Level III decision in 14-SGE-0003 decided on 6/26/2015)

17. A patient alleged that a provider violated her client rights when she called to complain about adverse side effects that she was experiencing after changing her medication. The complaint alleged that the provider violated her rights to: dignity and respect; prompt and adequate treatment; non arbitrary treatment decisions; participate in her treatment and access the grievance procedure. **All of the allegations were moot except the allegation that the provider violated her right to access the grievance procedure because the patient was no longer receiving services from the provider and the allegations pertained to events from two years before the decision was rendered.** The allegations concerning the patient's ability to access the grievance procedure meet an exception to the mootness doctrine because the allegations were potentially of significant importance to other clients. (Level IV decision in 14-SGE-0005 decided on 10/17/2016)

18. A patient alleged that a provider violated her client rights when she called to complain about adverse side effects that she was experiencing after changing her medication. The patient claimed that provider staff spoke rudely to her over the telephone, inaccurately claimed that staff did not need to respond to her inquiry for 48 hours, hung up on her, accused her of using foul language when she was unable

to speak clearly, treated her unfairly because of her disability and caused her to wait too long for a medication change. In this case, the grievant was no longer receiving services and the incident that formed the basis of her complaints was two years old.

**Collection of reliable evidence is problematic when allegations pertain to events more than six months old. The substantive complaints in the grievance were dismissed as moot.** (Level IV decision in 14-SGE-0005 decided on 10/17/2016)

19. A grievant claimed that she was wrongfully asked to complete release of information forms so that her therapist's wife could settle a personal argument with a third party. The substantive complaints were more than two years old before the grievance was filed. The State Grievance Examiner (SGE) determined that the case was not moot despite the age of the incidents leading to the complaint. In context of client rights **a case is moot where a determination is sought on a matter that cannot have any practical effect on the controversy.** There are **three exceptions** to the mootness doctrine. The SGE applied an exception and found that investigation was warranted in this case despite the staleness of the allegations because the issue was recurring in the grievant's therapy sessions and valid questions were raised about the grievant's access to the grievance procedure. If it was found that she did not have adequate access to the grievance process it would be of significant importance to other patients. (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)

20. A grievant claimed that a strip search conducted upon admission was improperly performed by staff at an inpatient psychiatric hospital. The grievant stopped receiving services from the provider before filing the grievance. As a preliminary matter, the State Grievance Examiner (SGE) determined that the case was not moot. In the context of client rights **a case is moot where a determination is sought on a matter that cannot have any practical effect on the controversy.** There are **three exceptions** to the mootness doctrine: **(i) the issue is recurring and likely to be raised again between the parties; (ii) the issue will otherwise likely evade review and is of significant importance to other clients; and/or (iii) the issue is of general importance.** **The second exception was applied to obviate the mootness doctrine** because the provider's search policies could negatively impact current and future patients if the patient was inappropriately searched. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

21. A grievant was arrested for a DUI in Illinois. He was working on his Driver Safety Plan and receiving outpatient AODA services through the county in order to have his driver's license reissued. He attended a portion of his safety plan, but did not finish it before being discharged for not following through with treatment. 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. The **grievant alleged the restrictions made him unable to transport himself to the clinic. His requests for telephonic or in home services were denied.** In the context of client rights **a case is moot where a determination is sought on a**

**matter that cannot have any practical effect on the controversy, including where the client is no longer receiving services from a provider.** The case was not dismissed as moot even though the Grievant was no longer receiving services because an exception applied. The issue of transportation was likely to be raised again between the parties. It was determined that **dismissing the case as moot because the grievant was discharged would fail to address a recurring issue between the parties.** (Level IV decision in Case No. 16-SGE-01 on 12/15/2016)

22. A patient claimed that her former therapist, who retired during the pendency of the grievance, lied in her progress notes, behaved inappropriately towards her and was not properly credentialed to provide services to her. The provider was no longer providing services to the grievant at the time that the complaint was lodged and the former therapist had retired. In the context of client rights **a case is moot where a determination is sought on a matter that cannot have any practical effect on the controversy.** There are three exceptions to the mootness doctrine. The case was not dismissed as moot even though the grievant was no longer receiving services because the issue was recurring and likely to be raised again between the parties. **Dismissing the case as moot because the grievant was discharged would fail to address a recurring issue between the parties.** (Level III decision in Case No. 16-SGE-03 on 11/3/2016)
23. A patient who was no longer receiving services from a provider appealed several grievances to Level III. In the context of client rights **a case is moot where a determination is sought on a matter that cannot have any practical effect on the controversy.** There are **three exceptions** to the mootness doctrine: **(i) the issue is recurring and likely to be raised again between the parties; (ii) the issue with otherwise likely evade review and is of significant importance to other clients; and/or (iii) the issue is of general importance.** The State Grievance Examiner found that the grievant would likely raise the issue again in the future if resolution is not found and that the provider had not yet addressed violations found at Level II of the grievance process. **Therefore, the first two exceptions were applied to obviate the mootness doctrine.** (Level III decision in Case No. 16-SGE-04 on 4/20/2017)
24. A Grievant claimed that she was **wrongfully discharged and incorrectly accused of violating program requirements based on inaccurate lab results** showing positive results for use of heroin, cocaine and morphine. The grievant stopped receiving services from the provider before filing the grievance. The State Grievance Examiner (SGE) determined that **the case was not moot. The SGE applied the mootness test and found that the issue was of general importance because it would negatively impact the client rights of present and future patients if the provider was using improper lab procedures and obtaining inaccurate lab results.** (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

25. A patient who was no longer receiving services from a provider appealed several grievances to Level III. In the context of client rights **a case is moot where a determination is sought on a matter that cannot have any practical effect on the controversy**. The State Grievance Examiner found that the grievant would likely raise the issue again in the future if resolution is not found and that current and future patients could experience rights violations if the issues raised were left unaddressed. Therefore, the first two exceptions were applied to **obviate the mootness doctrine**. (Level III decision in Case No. 16-SGE-08 on 5/26/2017)

26. The patient claimed that he was arbitrarily discharged from opioid use treatment services, that the facility failed to provide the patient with an Advocate and that the facility failed to advise family how to advocate for him. The patient was discharged when the patient arrived at the clinic with a .07 BAC level. **The State Grievance Examiner held that the case was moot because the patient was no longer receiving services so any decision could not have any practical effect on the controversy. Further, the matter did not fall within any of the exceptions to the mootness doctrine.** (Level III decision in Case No. 17-SGE-01 on 8/29/2017)

27. A patient's mother grieved multiple concerns regarding her son's treatment, and the events leading up to the patient's unfortunate passing. The case could be considered moot since the patient had passed away. However, **an exception to the mootness doctrine was found because there were concerns related to the grievance procedure and claims that the provider did not act to eliminate the risk of harm, which could have a potential impact on other patients.** (Level III Decision in Case No. 18-SGE-01)

28. A patient that was receiving developmental disability services was discharged prior to the grievance, which could have resulted in the case being dismissed as moot. However, **an exception to the mootness doctrine was found, as it was possible that if the provider was inadequately discharging or not following grievance requirements, this would have an impact on other patients.** (Level III Grievance Decision in Case No. 18-SGE-02)

29. A patient was no longer receiving services from the provider. However, **an exception to the mootness doctrine was found because if the provider failed to provide accurate records to former patients or retaliated by releasing confidential Protected Health Information (PHI) to prohibited parties that would impact current and future patients.** (Level III Grievance in Case No. 18-SGE-04)

30. 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. An exception was found to the mootness doctrine because there may be some issues that would be of concern to present and future participants. Specifically, **the right to adequate treatment in communication with sign language and access to the grievance procedure were implicated.** (Level III Decision, upheld at Level IV, in Case No. 19-SGE-02)

31. A patient complained about the medications she was receiving. However, by the time the grievance reached Level III the patient had been transferred to another facility. The grievance continued to be investigated, however, as **the issue is of general importance as it is related to the patient's medication and treatment. Additionally, there were issues identified with the provider's grievance procedure which would have an impact on current and future patients.** (Level III grievance decision in Case No. 20-SGE-09)

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