

## RETALIATION FOR USE OF GRIEVANCE PROCEDURE PROHIBITED

### THE LAW

Each patient shall... “Have the right to **present grievances** under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or **community mental health program without justifiable fear of reprisal** and to **communicate**, subject to par. (p) [the right to make phone calls], **with public officials** or with any other person **without justifiable fear of reprisal.**”  
§ 51.61(1)(u), Wis. Stats. [Emphasis added.]

“(1) A **patient** or a **person acting on behalf of a patient** may file a grievance under s. DHS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider **without fear of reprisal** and may **communicate**, subject to s. 51.61(1)(p), Stats., [right to make phone calls] with any **public official** or any other person **without fear of reprisal.**

(2) **No person may** intentionally **retaliate or discriminate** against any patient, person acting on behalf of a patient or employee for **contacting** or **providing information** to any **official** or to an **employee** of any **state protection and advocacy agency**, or for **initiating, participating** in or **testifying** in a **grievance procedure** or **in any action** for any remedy authorized by law.

(3) **No person** may **deprive** a patient of the **ability to seek redress** for **alleged violations** of his or her rights by unreasonably **precluding** the patient from **using the grievance procedure** established under s. DHS 94.29 or from **communicating**, subject to any valid telephone or visitor restriction under s. DHS 94.05, with a **court, government official, grievance investigator** or staff member of a **protection and advocacy agency** or with **legal counsel.**”

DHS 94.28, Wis. Admin. Code [Emphasis added.]

“No person who, in good faith, **files a report** with the appropriate **examining board** concerning the **violation of rights** under this section by persons **licensed** under ch. 441 [**nurses**], 446 [**chiropractors**], 450 [**pharmacists**], 455 [**psychologists**] or 456 [**nursing home administrators**], or who **participates in an investigation** of an allegation by the appropriate examining board, **is liable for civil damages** for the filing or participation.”  
§ 51.61(10), Wis. Stats. [Emphasis added.]

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### DECISIONS

1. Where a **methadone clinic discouraged a patient from bringing an advocate with him to a team meeting**, the clinic **violated** his right to bring a grievance

without fear of retaliation or discrimination. (Level III decision in Case No. 99-SGE-02 on 5/17/00. Appeal to Level IV by the patient was dismissed since the Level III decision was in his favor.)

2. A patient who had **complained about her therapist** and physician expressed **concerns about the confidentiality of her involvement in the grievance procedure** and any follow through that had occurred with her provider. She alleged that the **entire staff of the service provider knew about her complaints**. The director of the service provider noted that the **record keeping system for grievances was entirely separate** and that **only staff with a “need to know”** are given access to or information about the filing of grievances. **Only a select group** of management and treatment staff **were aware of this patient’s grievances** and information about them was not available to others. It was found that the **confidentiality of this grievance was honored** and no rights violation occurred. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)
3. A father claimed that his **son’s discharge from treatment** at a medical center was in **retaliation for his filing a complaint** about his own mother’s care there. It was determined that **other factors led to the son’s discharge** and that the father had been told that it was going to occur soon. This **occurred several months prior** to the complainant filing a grievance about his mother’s care. **No retaliation** for filing a complaint was found. (Level III decision in Case No. 02-SGE-06 on 1/27/03.)
4. There is **no limit to the number of grievances a patient may file**. But where an inpatient filed **many, many complaints** while in a treatment facility, without any attempts to resolve his issues first, he **should not be surprised** when **both the staff and his peers became very frustrated with him**. The county **transitioned him to a smaller home** with fewer residents where he would have less opportunity for confrontation with others. This was **not done in retaliation** for his use of the grievance process. (Level III decision in Case No. 02-SGE-05 on 3/19/03)
5. There is **insufficient evidence** to conclude that a **facility’s Chief Legal Counsel discouraged someone from filing a complaint**. The facts indicate he merely **informed the individual** that he did **not believe he had a malpractice claim that would be upheld in court**. The fact that the individual was able to bring this complaint and appeal it up through the grievance process to Level IV indicates that his right to complain was not violated. (Level IV decision in Case No. 02-SGE-07 on 3/10/04.)
6. 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. There was **no indication** that a psychiatrist’s services to a particular client were **terminated in retaliation** for his **use of the grievance procedure**. (Level IV decision in Case Nos. 05-SGE-06 and 05-SGE-08 on 12/15/06)

7. A former client of an outpatient methadone clinic **claims he was deterred** from filing complaints for **fear of retaliation**. He felt that **his sister was discharged from the same program for complaining**. The discharge of his sister could not be addressed since the reasons for her discharge from the program were confidential and she did not file a grievance about it. There was **no other evidence** presented **that clients were deterred from filing complaints**. (Level III decision in Case No. 10-SGE-13 on 3/03/11)
8. A provider's written statement to the client was **found to be a reprisal for contacting the department**. This action **constituted a violation of the client's right to be free from retaliation** for contacting state agencies or officials. It was noted that the provider made exemplary effort in implementing and adhering to client rights. The corrective action plan subsequently submitted by them was outstanding, as were their responses to the client's grievances. However, the corrective action plan did not address this particular issue and it should have. (Level III decision in Case No. 11-SGE-06 on 12/02/11)
9. A violation was found where the **provider issued a letter which threatened to terminate the client's services in an inappropriate context that could be interpreted to be retaliation for complaining**. (Level III decision in Case No. Case No. 11-SGE-09 on 03/05/13)
10. A provider telling a patient that he may be discharged if he does not improve his behavior with provider staff is not a violation of the patient's right to be treated with dignity and respect. A violation would be found if the provider threatened to discharge the patient if he continued to complain about services. However, the fact that the client's behavior arose in the context of complaining about staff or services did not alter the fact that the behavior was the cause of the threat to discharge the patient. **Since the threat to discharge the patient was made in reference to the behavior and not in reference to the fact that the patient was complaining about services means that there was no violation of the patient's right to be treated with dignity and respect or the patient's right to be free from retaliation**. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
11. A patient was discharged after he expressed his dissatisfaction with the services he was receiving by raising his voice and slamming a door. The patient and provider had cultural differences that underlay the parties' increasing frustration with one another and may have contributed to their relationship becoming unworkable. The provider lacked an adequate grievance process, which exacerbated the issues because the client was prevented from having his complaints heard by a third party. Here, the **discharge was held not to be retaliatory because there were documented legitimate treatment and management reasons for the discharge**. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
12. A patient claimed that she was retaliated against in several ways. The provider did not respond to the allegation of retaliation. However, **the evidence provided by the**

**patient was inadequate and nothing in the provider's documentation supported this allegation. Therefore no violation of the patient's right to be free from retaliation was found.** (Level III decision in 13-SGE-0006 decided on 12/18/2013)

13. 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. The main thrust of the threat appeared to be directed at the patient's husband. The parties became so frustrated that it resulted in a reduced ability to assist the grievant. **The act of threatening the grievant was retaliatory in nature and rose to the level of a rights violation even though she was not ultimately discharged.** When providers discourage clients from using the community grievance process they cause patients to feel that they are not being listened to and miss an opportunity to improve services. (Level III decision in 13-SGE-0011 decided on 4/11/2014)
14. A patient alleged that he was **required to speak to his doctor so that he could stay in the providers program after he requested an alternate doctor. The provider allegedly requested this conference before the patient filed a formal grievance.** A patient has the right to file a grievance without fear of reprisal. It would have been a violation if the patient was required to speak to the doctor after the grievance had been filed. However, the patient did not provide any evidence that he was required to speak to his original doctor and he did not claim that this demand was made until after he had made his formal complaint. No violation of the patient's right to be free from retaliation was found. (Level IV decision in 14-SGE-0001 decided on 12/22/2014)
15. A patient alleged that he was retaliated against for accessing the grievance procedure when his pain medications were reduced by 50% and he was discharged. The patient failed to provide evidence that either of these incidents were caused by his accessing the grievance procedure. **Further, the treatment record provided legitimate reasons for reduction of pain medications and for discharge.** No retaliation was found. (Level III decision in 14-SGE-0003 decided on 6/26/2015)
16. A grievant alleged that a provider violated her husband's client rights when she complained about his doctor's treatment of them when they discussed side effects related to the electroconvulsive therapy (ECT) that he was receiving. The grievant alleged that the provider violated the patient's rights to be free from retaliation. The doctors allegedly threatened to put the patient on a "non-treat list" if he failed to show up for an ECT appointment despite the side effects that he was reporting. **The patient was allegedly told that he was on the non-treat list when he cancelled an appointment. This allegedly triggered a fear of retaliation in the patient which caused him not to file a formal grievance until the patient obtained new insurance that allowed him to be treated by another provider. The grievance was submitted and dismissed at the first and second provider levels because it**

**was not filed within the 45 day time limit** provided in the regulations. The grievant did not meet his burden of proof to show that there is good cause to investigate the allegation despite the late filing because there was no evidence other than the grievant's recollection that the patient was placed on a non-treat list. **A client rights investigation into the substantive issues was barred and the case was dismissed because there was no other evidence submitted to explain the delayed filing of the grievance.** (Level III decision in 14-SGE-0004 decided on 10/10/2015)

17. 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)
  
18. A patient complained that the handling of her grievance was retaliatory because she was allegedly accused of things that she did not do and forced to defend her dignity throughout the entire grievance process. The patient showed her dissatisfaction with her diagnosis on several occasions prior to filing of the grievance. She felt despair in part because of the diagnosis that she received from the provider. However, the **diagnosis and refusal to alter it is not a form of retaliation.** Further, there was no evidence that communications from the provider to the grievant were sufficiently disrespectful to be retaliation for filing the grievance. (Level III decision in Case No. 16-SGE-04 on 4/20/2017)
  
19. The grievant claimed that her daughter was retaliated against when she was discharged. The grievant's daughter provided a sample that tested positive for drugs after being informed that she would be discharged if she received a positive drug test. **Clients have the right to access the grievance procedure without fear of retaliation.** In this case, the patient did not complain until she had already been discharged. **It is impossible for the discharge to be retaliation for filing a grievance when she did not submit a grievance until after she was discharged.** (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

20. A patient **complained that the provider retaliated against her for filing a grievance when the Level II decision did not specifically address the patient's concerns, and when the provider changed her prescribed medication.** No violation of the grievant's right to be free from retaliation was found as the grievant did not offer any evidence showing that the decision was written to punish her for complaining; nor was there evidence that her medication was changed in retaliation for complaining. (Level III Grievance Decision in Case 18-SGE-03)
21. A **patient complained the provider was retaliating against her for grieving when the provider released her treatment records to a law firm.** The grievant had filed complaints to the Wisconsin Department of Safety and Professional services and, afterward, her records were released to a law firm. However, those records were released for the purpose of preparing the provider for a potential lawsuit initiated by the patient. **No retaliation was found since the records were released to a law firm in order to prepare for a potential lawsuit from the client.** (Level III Grievance Decision in Case No 18-SGE-04)
22. A patient complained that her therapist discontinued her treatment in retaliation for filing a grievance. The **therapist was not employed by the provider and was in fact from a different agency, therefore it could not have been retaliation as the provider that she filed the grievance with does not have authority over discharges from other service provider's.** (Level III Grievance Decision, upheld at Level IV, in Case No. 18-SGE-05)
23. 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 violation of the participant's right to be free from retaliation was found because **the alleged actions were not taken against the participant; because no evidence of the truth or falsehood of the allegations was provided; and because no evidence of the participant being discharged in any manner was provided.** There is ample evidence that the grieving party was dissatisfied with the provider's day treatment service and removed the participant because of those concerns. (Level III Grievance Decision, upheld at Level IV, in Case No. 19-SGE-02)
24. An outside agency filed a grievance on behalf of a client. The agency and client **claimed that the client's discharge was retaliatory because the provider found out the client was appealing the state's decision to reduce her personal care hours.** It was determined that the discharge was not retaliatory. **The provider supported the client receiving more hours, and also requested that the state provide more personal care hours for the client. The provider also discovered that the client would be appealing the state's decision in early April, but the discharge did not happen until the end of April. In between this time the client/provider relationship had diminished.** Given all of the information, there was not sufficient evidence, other than the agencies and client's claim, to suggest the discharge was retaliatory. (Level III Grievance Decision in Case No. 20-SGE-03)

25. 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)
26. A patient **claimed staff were retaliating against her for filing grievances when her therapy appointments were changed. The patient's appointments were, at one point, removed from the system and changed when the provider was no longer conducting in-person services due to COVID-19.** The provider rescheduled the patient's appointments exactly how the patient had requested. In this situation, there was no evidence to suggest the appointments were purposefully removed to harm the patient for filing grievances. (Level III grievance decision in Case No. 20-SGE-07)
27. A patient **claimed a staff member was retaliating against her for filing complaints against this staff member when the patient was restricted from calling the provider, unless it was to schedule appointments. The restriction was due to the patient's behavior as she had called the clinic extensively over the course of a week regarding the same issues.** The patient's demeanor was interpreted as demanding and rude, therefore she was issued a letter stating her contact was limited due to behavior. The patient did not file grievances regarding the staff member until after the letter was issued. Since the patient did not file grievances about this staff member until after the restriction took place, and the restriction was caused by the patient's behavior, there was no retaliation. (Level III grievance decision in Case No. 20-SGE-07)
28. An individual filed a complaint on behalf of his wife, **alleging that the nursing staff at the patient's psychiatric clinic intimidated and bullied the patient by labeling her as "drug-seeking" after the patient and the grieving party filed complaints about a transfer policy the clinic had in place.** The grieving party alleged that nursing staff harassed the patient with phone calls, and submitted his recollection of a phone call that the grieving party had with one staff member in which the pair discussed the policy in questions and whether the patient was going to withdraw from the current psychiatrist's caseload. There was nothing in the grieving party's recollection of the call or the patient's treatment record which referred to the patient as "drug-seeking," "pill-seeking," although there was discussion between the patient and the psychiatrist of the risks of stimulant medications. There was not sufficient evidence to conclude that nursing staff members were acting in retaliation after the

patient raised concern about the clinic's transfer policy. There was no violation found. (Level III decision in case number 21-SGE-07)

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