

RULES AND SANCTIONS

LAW

Each patient shall... "Have a right to a **humane psychological... environment...**"
§ 51.61(1)(m), Wis. Stats. [Emphasis added.]

"Patients have the right to be free from having **arbitrary decisions** made about them. To be **non-arbitrary**, a decision about a client must be **rationally based** upon a **legitimate treatment, management or security** interest."

DHS 94.24(3)(h), Wis. Admin. Code [Emphasis added.]

"Each patient shall be given an **opportunity to refute any accusations** prior to initiation of disciplinary action." DHS 94.24(2)(g), Wis. Admin. Code [Emphasis added.]

"No patient may be **disciplined** for a violation of a treatment facility rule unless the patient has had **prior notice of the rule.**"

DHS 94.24(2)(h), Wis. Admin. Code [Emphasis added.]

[NOTE: If a **penalty is imposed** upon a patient as the result of a **violation** of a **rule**, in order to **deter** that patient or others from exhibiting violating the rules, then **this is a "sanction"** and must meet the standards for imposing sanctions. If a **restriction** is imposed for **security, treatment or management reasons**, rather than for a rule violation, then it is a **risk-reduction measure** and standards for such measures apply. See the Risk-Reduction section of this digest.

Any **consequence** imposed on a patient for a **rule violation** must meet the following standards approved by the Client Rights Office to be valid:

Standard # 1: The patient must have **adequate notice of the rule** and of the **penalty** for violation of that rule. Notice **should be in writing** and, regardless of how communicated, must be **clear, specific and objective**. The **penalty** may **vary** based upon **written criteria for aggravating and mitigating circumstances**.

Standard # 2: A rule must be **enforced** and the consequences **applied equally** to patients in similar circumstances. **Differences in circumstances** that are relevant to differences in penalty for the same offense can be left to **staff discretion**. However, such discretion must be guided by the written criteria for **aggravating and mitigating circumstances**.

Standard # 3: The **judgment** that a rule has been violated or that aggravating or mitigating circumstances exist must be based on the **best available evidence**. A certain amount of **checking up on facts** must be done, the patient should be heard, and the facts must be documented and made available to the patient. Subjective judgments should be limited to deciding issues of **credibility and intent**.

Standard # 4: The patient **must be able to have chosen** whether or not to commit the rule violation. That is, he or she **must be responsible**. (For instance, if a patient is hallucinating and hits a peer, imposing a penalty is not appropriate. **Risk-reduction** measures may certainly be taken, however, to prevent the patient from hitting anyone else during the period of hallucination.)

Standard # 5: The burden is on the staff to show that it is **more probable than not** that the patient committed the rule violation.

Standard # 6: The penalty **must not be excessive**, either absolutely or in relation to the offense.

Documenting Consequences: Staff must document: 1) that the patient had **proper notice** of the rule and the possible consequences of violating it; 2) Any **aggravating or mitigating circumstances**; 3) The **facts** relied upon as objectively as possible; 4) The patient's **degree of responsibility**; and, 5) The **conclusions** reached, based on the **facts and circumstances**.)

[Note: See also the "Due Process" section of this digest.]

DECISIONS

1. A grievant alleged that she was **not made aware prior to being administratively discharged that she was violating agency rules. She alleges that she did not have an opportunity to refute any allegations of rule violations prior to being discharged from an intensive outpatient program.** Review of treatment records does not document any notice of agency rule violations were presented to the grievant, no facts of the rule violation and the grievant's degree of responsibility and the conclusion based on the facts. This does rise to a violation of the grievant's rights. (Level III Decision in 25-SGE-01117)

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