

SEARCHES - - OF PERSON AND POSSESSIONS

THE LAW

"(1) '**Body cavity search**' means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(2) '**Body search**' means a personal search, a strip search or a body cavity search of a patient.

(33) '**Personal search**' means a search of the patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth...

(43) '**Strip search**' means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient's clothing and body and visual inspection of his or her body cavities."

DHS 94.02, Wis. Admin. Code [Emphasis added.]

"A treatment facility may **fingerprint** a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility under s. 51.35(3) or 51.37, Stats., or committed under ch. 971 or 975, Stats."

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

"Only **inpatients** may be subjected to a **body search**. All body searches shall be conducted as follows:

1. A **personal search** of an inpatient may be conducted by any facility staff member:
 - a. Before a patient leaves or enters the security enclosure of **maximum security** units;
 - b. Before a patient is placed in **seclusion**;
 - c. When there is **documented reason** to believe the patient **has**, on his or her person, **objects or materials** which **threaten** the **safety or security** of patients or other persons; or
 - d. If, for **security reasons**, the facility **routinely conducts personal searches** of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35(3) or 51.37, Stats.;

2. A **strip search** of an inpatient may be conducted:

- a. Only in a **clean and private place**;
- b. Except in an emergency, only by a person of the **same sex**;
- c. Only when all **less intrusive search procedures** are deemed **inadequate**; and
- d. Only under circumstances specified under **subd. 1a to c**;

3. A **body cavity search** of an inpatient may be conducted:

- a. Only in a **clean and private place**;
- b. Only by a **physician** and, whenever possible, by a physician of the same sex;
- c. Only when all **less intrusive search procedures** are deemed **inadequate**; and
- d. Only under circumstances specified under **subd. 1a to c.**"

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

"The **room and personal belongings** of an **inpatient** may be **searched** only when there is **documented reason** to believe that **security rules have been violated**, except that searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility **policies.**"

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

"**Personal storage space** may be searched only if there is documented reason to believe a violation of the facility's **security regulations** has occurred and the **patient is given the opportunity to be present** during the search, **except in forensic units** where **routine searches** may be conducted in accordance with written facility policies."

DHS 94.27(3), Wis. Admin. Code [Emphasis added.]

[Note: See also the "Drug Testing" section of this digest.]

DECISIONS

1. A grievant claimed that a strip search conducted upon her was improperly performed by staff at an inpatient psychiatric hospital. The provider did not specifically inform the patient that a strip search is a routine part of admission procedure, that she could refuse or that refusal would lead to an inability to provide treatment. The grievant claimed that she never would have signed a statement agreeing to voluntary admission if she had known that the strip search

would be required. A strip search is defined as a search in which the patient is required to remove all of his or her clothing. The clothing and body of the patient can be examined and a visual check can be conducted of the patient's body cavities. No documentation was done by the provider staff that indicated that staff suspected that the grievant had any threatening objects on her person.

Even though a strip search is reasonable measure to ensure the safety of staff and patients, the fact that there was no individualized documentation of the need for a strip search is a violation of the code, which indicated a violation of the grievant's right to a humane environment. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

2. A grievant claimed that a strip search conducted upon her was improperly performed by staff at an inpatient psychiatric hospital. Although the search was conducted according to protocol and the patient was not touched, she found it highly invasive. **Patients have the right to be orally informed of their rights and to be given a copy of their rights, unless there is an emergency, but patients do not have the right to refuse policy and protocol in the same way that they have the right to refuse treatment.** In this case there was no emergency and evidence showed that the patient was informed of her rights orally and in writing. The provider did not specifically inform the patient that a strip search is a routine part of admission procedure, or that she could refuse the search. She was not informed that refusal of the search would lead to an inability to provide treatment. It was held that **the right of notification pertains to notification of the client rights granted by statute, not notice of a facility's search policy. Since the patient received notice of her rights, and there is no right to advance warning of a strip search in the relevant statute, no violation was found.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
3. A patient filed a grievance about a strip search conducted upon her admission at an inpatient psychiatric hospital. The grievant claimed that she never would have signed a statement agreeing to voluntary admission if she had been warned that the strip search would be required. **Patients must voluntarily agree to treatment at a time when they are competent and able to understand the terms of the consent in order for consent to be valid.** The search was not technically part of the patient's treatment as treatment is defined in applicable statutes. The search was most likely done to meet safety and management needs. **If a person were able to enter into an inpatient psychiatric hospital with weapons or drugs the safety of all patients would be compromised. Therefore the right to informed consent was not violated because informed consent relates to treatment, not policy.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
4. A grievant claimed that a strip search conducted upon her admission was improperly performed by staff at an inpatient psychiatric hospital. The search was not technically part of the patient's treatment as treatment is defined in

applicable statutes. Such a search was most likely done to meet safety and management needs. **If a person were able to enter into an inpatient psychiatric hospital with weapons or drugs the safety of all patients would be compromised. Therefore the right to informed consent was not violated because informed consent relates to treatment, not policy.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

5. A grievant claimed that a strip search conducted upon her admission was improperly performed by staff at an inpatient psychiatric hospital. The search was not technically part of the patient's treatment as treatment is defined in applicable statutes. The patient has a right to participate in her own treatment. **Participation** should be individualized, but it **does not extend to procedures that occur prior to completion of intake and assessment. Patients do not have the right to participate in policy making or the procedures used to ensure the safety of patients and staff.** Since a strip search is completed per policy, not per treatment needs, the right to participate in treatment does not extend to strip searches. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
6. A grievant claimed that a strip search conducted upon her admission was improperly performed by staff at an inpatient at a psychiatric hospital. The patient also complained that staff did not warn her that a strip search was required and that she was not informed that she could refuse the strip search as well as treatment. The grievant claimed that she never would have signed a statement agreeing to voluntary admission if she had known that the strip search would be required. **Patients must voluntarily agree to treatment at a time when they are competent and able to understand the terms of the consent In order for consent to be valid. The search was not technically part of the patient's treatment as treatment is defined in applicable statutes. The patient has a right to refuse treatment. However, since a strip search is policy, not a treatment, the right to refuse treatment does not extend to strip searches.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
7. A patient claimed that her right to adequate treatment was violated when a strip search was conducted without warning upon her admission to an inpatient psychiatric hospital. The search was allegedly conducted with brusque orders. **Adequate treatment for mental health should include trauma informed care, especially for female patients admitted to inpatient units.** Such patients are likely to have experienced some form of sexual abuse. However, **adequate treatment refers to treatment and not to strip searches, which are a policy or procedure. The strip search did not violate the patient's right to adequate treatment.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
8. A patient claimed that her right to a humane environment was violated when a strip search was conducted without warning upon her admission to an inpatient

psychiatric hospital. The **relevant administrative code provides in part that searches should be done in the least intrusive manner possible. The least intrusive manner possible means that the patient should have an unhurried chance to understand and agree to the search before it begins.** Specifically, the reasons for the search should be conveyed before the search, and the patient should be made aware of the option to refuse the search and that doing so may mean that the patient cannot receive treatment for safety or security reasons. Strip searches are allowed before a patient leaves or enters the security enclosure of maximum security units, before a patient is placed in seclusion, or where there is documented reason to believe that the patient has, on her person, objects that threaten the safety or security of patients or staff. In the case at hand, **no documentation was done by the provider staff that indicated that staff suspected that the grievant had any threatening objects on her person.** Even though a strip search is reasonable measure to ensure the safety of staff and patients, **the fact that there was no individualized documentation of the need for a strip search is a violation of the code. A violation of the grievant's right to a humane environment was found because of the lack of documentation.** (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

9. A patient was voluntarily admitted to the behavioral health unit after considerable indecision. The patient grieved that she was not allowed to refuse a body search upon admission. Patients have the right to refuse all medication and treatment. However, an inpatient's right to refuse treatment and leave the facility immediately is weighed against safety concerns prior to release. Since the patient could not leave the facility instantly, a search was necessary. Decisions regarding the patient's treatment must be rationally based on legitimate treatment, management or security interests. **Here, a search for weapons or contraband upon admission to an inpatient unit was rationally related to protecting the safety of the patient, other patients and staff.** (Level III decision in Case No. 16-SGE-08 on 5/26/2017)

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