

## TREATMENT PARTICIPATION

### THE LAW

Each [patient] shall... “Have the right to be **informed** of his or her treatment and care and to **participate in the planning** of his or her treatment and care.”

§ 51.61(1)(fm), Wis. Stats. [Emphasis added.]

“Each patient shall be **informed** of his or her treatment and care and shall be permitted and encouraged to **participate** in the **planning** of his or her **treatment and care.**”

DHS 94.09(1), Wis. Admin. Code [Emphasis added.]

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### DECISIONS

1. A patient’s **treatment plan** focused on the patient’s **suicidal ideation** and safety. His doctor developed the plan based on the information he had at the time. Where the patient claimed, at a much later date, that **he lied** to the doctor, his right to prompt and adequate treatment was **not violated**. (Level IV decision in Case No. 99-SGE-05 on 3/29/02, upholding the Level III.)
2. A patient wanted to **bring a friend** to her **therapy sessions**. The service provider agreed that there are times that it may be appropriate, especially if the person is a primary support person for the client. Bringing another person to a therapy session **requires a signed release** from the patient. Since the requested remedy was provided here, this issue was considered resolved. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)
3. A service recipient felt her **case manager** was **too controlling** of her life. She usually **accompanied** the individual to her **doctor appointments**, but **did most of the talking**. However, the doctor had ordered the case manager to monitor the individual’s psychotropic medications and to visit her weekly. Thus, it was appropriate for the case manager to accompany her and report to the doctor. The individual also had private appointments with her doctor, so her right to treatment was **not violated**. (Level III decision in Case No. 01-SGE-05 on 11/29/01.)
4. A therapist did not present his written assessment and treatment plan to the patient prior to beginning treatment. The **treatment plan** was developed after the first session but not signed by the patient until after the third session. The plan **should have been provided** to the patient **prior to his second session**. This was a violation of the patient’s rights to participate in his treatment planning and to provide informed consent for treatment. (Level IV decision in Case No. 01-SGE-07 on 3/29/02, reversing the Level III decision.)

5. A patient wanted to **continue the individual therapy** she had received for 9 years, but the service provider **shifted** to only doing **group therapy** with her. She had been made aware months in advance of the upcoming change in services. But her **interim plan** for transitioning to group therapy was **not documented** or consented to by the patient. Thus, her **right to treatment** and her right to informed consent were **violated**. It was recommended that the service provider create a space on its treatment plans for the patient's signature and that they fully document all services received by the patient. (Level III decision in Case No. 01-SGE-09 on 3/27/02.)
6. A patient **wanted to choose a new psychiatrist** after her case was transferred from a doctor she had been seeing to another doctor. The service provider tried to accommodate her request, but the two psychiatrists she asked for declined to accept her on their caseloads. The accommodation **attempts were reasonable**. No violation of her rights was found. (Level III decision in Case No. 01-SGE-09 on 3/27/02.)
7. Patients have the **right to involve their spouses in home-visit** treatment sessions unless their participation is contraindicated for treatment reasons. The service provider should either allow such participation or explain to the patient why it is contraindicated. The patient would have to **sign a release** of information to allow the spouse to be present during treatment sessions. (Level III decision in Case No. 01-SGE-09 on 3/27/02.)
8. A complainant claimed he was not allowed to participate in the planning of his treatment with regard to **joint marriage counseling**. It was found that these **were individual sessions for his wife** in which **he was invited** to be present. No rights violation was found since it was **not his treatment** that was involved. It was concluded that **joint marriage counseling, per se, is not mental health treatment** to which "patient rights" apply. There was no violation of his rights, even if it was joint marriage counseling. (Level IV decision in Case No. 02-SGE-07 on 3/10/04.)
9. A **methadone clinic** took away a client's **Sunday take-home privileges** after some incidents. The client had a positive breathalyzer test result for alcohol, had lost her take-home bottle, and had taken an overdose of another medication. She was informed in writing of the requirements to restore her Sunday take-home privilege, which included having no positive breathalyzers for alcohol and obtaining a letter from her psychiatrist stating that in his/her best clinical judgment that she was responsible and could handle her Sunday take home bottle. Her **right to be treated fairly was not violated** because the clinic had **significant, appropriately documented reasons** to take away her Sunday take-home dose. The Sunday take-home dose was eventually restored in an individualized and appropriate manner. (Level III decision in Case No. 04-SGE-02 on 12/20/04)

10. A client's right to be treated with dignity and respect was **violated** by the **lack of shared decision-making** and **collaborative planning** during the **evaluation and assessment phase** of her services. While the service provider does maintain the right to choose which clients they will or will not see, their assessment and evaluation of a client's treatment needs should also **recognize and respond to a client's request** for more frequent visits. They need to **clearly define the purpose of the assessment** and set **reasonable expectations** for the client. (Level III Decision in Case No. 05-SGE-003 on 6/8/06)
11. An outpatient client alleged that her right to **ongoing participation** in her treatment planning was violated. The **right to participate** in the planning of treatment interventions and modalities is **continuous** and ongoing throughout the course of treatment. But it is **limited** by both the **therapist's abilities** and the **therapist's professional decision-making**. That is to say, clients do not have the right to direct their therapy, but rather to offer insight and feedback about what they believe is effective treatment for them. (Level III Grievance Decision in Case No. 05-SGE-12 on 5/16/06)
12. A patient complained that **an internal medicine specialist, rather than a psychiatrist, provided her prescriptions**. This was **not a rights violation**, particularly since a psychiatrist initially evaluated her and provided a diagnosis and prescription recommendations. She has a right to participate in her treatment and, **if she was unhappy with her doctor, she could have requested a second opinion**. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
13. A patient's **right to participate in her treatment planning** was **not violated** when she asked to switch to another group, the provider transferred her to that group, and then she decided she wanted to attend a different group. The provider denied her request for financial coverage and/or a referral to the third group. The **provider was not obligated to recommend that particular group for her. They offered all the services that they determined would be appropriate and helpful for her, based on her individual assessments**. (Level III decision in Case No. 11-SGE-01 on 6/28/11)
14. A client's **right to participate** in her treatment planning was **not violated** when the hospital determined that her medications should not be changed. Her **doctor did consider her input** before making a decision to keep her prescription the same. She **was given a second medical opinion** regarding her medication and she retained the right to refuse the medication prescribed to her. (Level III decision in Case No. 11-SGE-02 on 06/27/11)
15. A patient explained to his doctor that he did not want to take any medications that might cause unwanted sexual side effects. The patient was put on a medication that does not cause sexual side effects for all patients. **The patient alleged that he was not taken off of the medication quickly**

**enough when he reported sexual side effects and it damaged his sexual performance.** The patient had the right to participate in his own treatment. The notes demonstrate that **the patient's input was taken into consideration both when prescribing the medication and when discontinuing the medication. The patient's right to participate in his treatment was not violated regarding medications.** (Level IV decision in 14-SGE-0001 decided on 12/22/2014)

16. A patient filed a grievance that his therapist refused to conduct a PTSD evaluation on him despite the patient asking several times to be evaluated for PTSD. The case notes disclosed that the therapist had a legitimate reason to not test for PTSD, namely that the client was seeking a PTSD diagnosis to unfairly access SSDI. **The therapist did not have to test the patient for PTSD if the therapist was fairly certain that the patient did not have PTSD.** A client's right to participate in their treatment is not absolute; staff persons are to take the patient's wishes into account, but in the end the treatment decisions must be made by staff persons who are trained to provide services. **A therapist can form a professional opinion and act on it even if it is against the client's wishes or views.** (Level III decision in 14-SGE-0002 decided on 11/19/2014)
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 patient can communicate preferences for his or her treatment to his or her treatment team and doctor. These preferences have to be taken into account when treatment decisions are made. Here, **the grievant's preference to change her medication was documented and the doctor's decision was also documented. The patient's opinion was found to have been taken into consideration. This case would not have risen to a violation of the patient's right to participate in her own treatment even if this portion of the complaint had not been dismissed as moot.** (Level IV decision in 14-SGE-0005 decided on 10/17/2016)
18. A patient was receiving services at a Community Based Residential Facility under a **commitment order and an involuntary medication order.** **The patient claimed that the facility should respect her right to refuse medication and treatment.** The patient alleged that one medication was having negative effects on her life and that she had been at the provider for too long and needed to return home. It was **not a violation of the client's rights to give her medication over her attempted refusal because the court order to medicate was valid.** The provider **did not violate the patient's right to refuse treatment by placing her in the least restrictive environment and providing treatment ordered by a court.** Further, the patient exercised her right to participate in her own treatment by complaining about the medication, which eventually led to her being taken off of it. (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)

19. A patient was receiving services at a Community Based Residential Facility (CBRF) under a Court's commitment order and involuntary medication order. The patient wanted to be discharged. **All patients have the right to participate in their treatment plan and to receive the least restrictive treatment possible.** While the grievance was pending, the patient gained the ability: (i) to have supervised visits outside of the CBRF, (ii) to have access to the CBRF's exercise equipment, (iii) to receive transportation to another CBRF to use their exercise equipment, (iv) to cook and (v) to access to the library. The patient's **request to be discharged was not granted because there was a court order in place requiring her to receive inpatient care.** The Provider followed the Court's order, consequently, the patient's continued placement was not a violation of the grievant's right to participate in her own treatment or her right to the least restrictive treatment. (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)
20. A patient refused to work with any of the three staff that were assigned to work with him and refused to work with two entire agencies. The record showed that the patient was asked several times about whether he wanted to receive services and what type of services he should receive. However, **participation does not mean ultimate decision making authority. Participation means that a patient has the right to have their opinion known, considered and documented by the treatment team, not necessarily followed.** Therefore the patient's right to participate in his treatment was not violated by the treatment team's discharge decision. The right to participation does not mean that a provider is obligated to follow a patient's wishes, but must carefully assess the patient's needs and goals. Here, the grievant's feedback included alarming threats and could be interpreted to be severely negative, to the point of indicating that continued services were undesired and would be counter-therapeutic. The evidence showed that the treatment team tried to make a discharge decision with knowledge and understanding of the grievant's feedback on the issue. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)
21. 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)
22. A patient complained that she was not formally presented with or allowed to participate in the creation of a formal treatment plan. Evidence showed that

the therapist discussed the treatment plan with the patient and gave her the opportunity to comment on it and approve of it informally. However, she did not see her treatment plan or the services included therein. She was not given the opportunity to sign off on the treatment plan. Applicable administrative code requires that a patient have the opportunity to be informed of services included in a treatment plan, participate in planning the services and sign off on the treatment plan. The plan must be reviewed with a patient every 90 days or every 6 therapy sessions. Discussion of goals in therapy sessions was held **not** to be the same as the patient being given formal opportunities to see her goals and evaluate her progress. **The patient's rights to fair and adequate treatment and right to participate in and be informed of her treatment plan were violated where she did not sign off on a formal written treatment plan within the timeframes provided in the applicable code and regularly review her progress toward the treatment goals laid out in the plan.** (Level III decision in Case No. 16-SGE-04 on 4/20/2017)

23. **A patient complained that the facility violated his client rights when he was provided with treatment which he and previously refused; was diagnosed and treated incorrectly; and was lied to by the provider.** The Level III Decision concluded that the grievant's right to challenge his record was violated because the provider did not adequately explain the process of how to challenge one's treatment record. The provider explained that he could amend his record, but did not explain or allow him to challenge his record. The Level IV Decision concluded that the Level III Decision was reasonably based in fact and law and was upheld. (Level III and IV Decision, Case No. 17-SGE-04)
24. 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. Insufficient evidence was submitted to demonstrate that the grieving party were **inadequately informed of the treatment plan or that the grieving party was not allowed to participate in treatment planning.** On the contrary, the **provider met with the grieving party to discuss alternatives and, at the six month review, shared the data collection that had begun a few weeks prior to the meeting.** (Level III Decision in Case No. 19-SGE-02, upheld at Level IV)
25. The grieving party claimed that the **provider did not involve them in their son's treatment planning and treatment decisions. The client is not a minor, nor was there documentation that states the grieving party has authority over the client's care so therefore, the provider was not obligated to inform them of every treatment decision.** However, it was documented that the provider had numerous conversations with the grieving party about the client's care and references the grieving party's concerns

when making treatment decisions. (Level III Decision in Case No. 19-SGE-04, upheld at Level IV)

26. The grieving party claimed that the **provider did not involve them in their son's treatment planning and treatment decisions. The client is not a minor, nor was there documentation that states the grieving party has authority over the client's care so therefore, the provider was not obligated to inform them of every treatment decision.** However, it was documented that the provider had numerous conversations with the grieving party about the client's care and references the grieving party's concerns when making treatment decisions. (Stage III Decision in Case No. 19-SGE-04, upheld at Stage IV)
27. A patient grieved when her **new Prescriber would not refill her prescription without further diagnostic testing. The testing the Prescriber was requesting could not be completed with the provider, and the grievant was unable to find a different provider that would be able to complete the test.** The grievant therefore did not get her prescription refilled. It was found to not be a violation of the patient's rights as **the Prescriber was within professional standards, adequately documented the reasons why he did not refill the prescription, and informed the grievant of this decision.** (Level III Grievance Decision in Case No. 20-SGE-01)
28. A patient **complained when he was unable to choose his treatment provider.** The patient had requested to receive treatment from a Nurse Practitioner, but the county psychiatrist in charge of his treatment as an involuntarily committed patient determined that the patient's level of care required a psychiatrist. The county was open to finding a different doctor the grievant was comfortable with and that was appropriate for the patient's level of care. (Level III Grievance Decision in Case No. 20-SGE-06)
29. A **patient's right to be informed of his or her treatment and care was violated when the patient was not told that her therapist was leaving the county until the therapist's last day.** Therapists are an important part of patients' treatment team and as such, patients should be informed within a reasonable amount of time, if possible, of any major changes. The therapist had 30 days to inform the patient she was leaving, as did multiple staff from the grievant's case management team. The patient was not informed until the therapist's last day, which was unreasonable and a violation of the patient's right. However, the county created a new policy that requires staff to inform patients at least three weeks prior to an anticipated change in team member. There are no other remedies that could be provided through the grievance process, therefore, the grievance was dismissed as resolved. (Level III grievance decision in Case No. 21-SGE-03)

30. An individual filed a complaint on behalf of his wife, alleging that the patient's **psychiatrist failing to formally evaluate the patient for ADHD violated the patient's right to participate in the planning of her treatment and care.** The treating psychiatrist was consulted, and in his opinion, based upon the information in her treatment record and his experience with the patient, there was not sufficient concern to refer the patient for formal neuropsychological testing for ADHD. The psychiatrist also opined that stimulant medications used to treat ADHD could pose a risk to the patient. **While the wishes and opinions of patients must be considered, deference is given to the clinical judgment and impressions of treatment professionals.** There was no violation of the patient's right to participate in the planning of her treatment and care. (Level III decision in case number 21-SGE-07)
31. The grievant alleged that her patient rights were violated when she was **not allowed to choose her providers.** Wisconsin Statute 51.61(1)(fm) requires that patients be allowed to participate in the planning of their treatment and care, but **does not require providers to let patients choose the members of their care team.** However, this grievance concerned a Comprehensive Community Services Program that is also governed by Wisconsin Administrative Code DHS 36. Wisconsin Administrative Code **DHS 36.19(a) states that consumers are required to have a "[c]hoice in the selection of recovery team members, services, and providers."** This issue was noted in a Statement of Deficiency issued by the Wisconsin DHS Division of Quality Assurance, and the provider had made the appropriate changes to its procedures. Therefore, the issue was dismissed as resolved. (Level III Grievance Decision in Case Number 24-SGE-00273).
32. A grievant alleged that their right to have staff make reasonable and non-arbitrary decision about their treatment and discharge from Comprehensive Community Services (CCS) was violated. The grievant **alleged that they were not included in treatment planning or decision making regarding their discharge from CCS.** There was evidence to support that the grievant was included in discharge planning and that an extension of the discharge was given to help provide additional support and services to the grievant. This allegation was unfounded. (Level III Decision in 24-SGE-00955)

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