

Legal Issues in the Involuntary Treatment of Mental Illness

Qualified Mental Health Practitioner Training

Vermont Department of Mental Health

2008

Training Outline

- INTERFACE WITH VSH ADMISSIONS
- VERMONT LEGAL STATUTES
- INVOLUNTARY APPLICATIONS
- DOCUMENTATION
- DISPUTE RESOLUTION
- LEGAL ISSUES
- SCENARIOS
- WRITTEN EXERCISE

VSH ADMISSIONS OFFICE

- 24 HOUR ACCESS

(802) 241-1000

- ADMISSION NOTIFICATION:
 - Involuntary Admissions
 - All CRT Admissions - ADULTS
- ADMISSION REFERRAL PROCEDURE:
 - Intake Questionnaire For Voluntary Adult Admits

VSH RESOURCES

Hospital / Crisis Bed Availability

- Medical Records for all previous VSH admissions
- Copies of all active Orders of Non Hospitalization
- CRT list (current)

VSH CENSUS ATTRIBUTION

- Census Decisions
- Mandatory Consultation with designated CMHC
- VSH Notification
- Documentation of contact with CMHC



VERMONT MENTAL HEALTH STATUTES

- MENTAL ILLNESS DEFINITION
- A PERSON IN NEED OF TREATMENT
- DANGER TO SELF OR OTHERS
- EMERGENCY EXAMINATION (EE)
- WARRANT
- ALCOHOL SERVICES ACT

MENTAL ILLNESS

- A substantial disorder of **thought, mood, perception, orientation, or memory**, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, **but shall not include mental retardation.**

A PERSON IN NEED OF TREATMENT

- A person that is suffering from mental illness and, as a result of that mental illness, his capacity to exercise self control, judgment, or discretion in the conduct of his affairs and social relationships is so lessened that he poses a **danger of harm to himself or others.**

DANGER TO SELF

- Threatened or attempted suicide or serious bodily harm.
- Behavior in such a manner as to indicate that patient is unable, without supervision and the assistance of others, to satisfy the need to nourishment, personal or medical care, shelter, or self protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

DANGER TO OTHERS

- Inflict or attempt to inflict bodily harm on another
- Threats or actions placing others in reasonable fear of physical harm to themselves; or
- Actions or inactions presenting a danger to persons in his/her care

Involuntary Treatment

7104. Wrongful hospitalization or denial of rights

Any person who willfully causes, or conspires with or assists another to cause the hospitalization of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as a mentally ill.....individualshall be fined not more than \$500.00 or imprisoned not more than one year, or both.

7611. Involuntary Treatment

No person may be made subject to involuntary treatment unless he (*or she*) is found to be a person in need of treatment or a patient in need of further treatment.

CRITERIA FOR INVOLUNTARY PSYCHIATRIC ADMISSIONS

- Exacerbation of mental illness
- Danger to self / others
- Absence of less restrictive alternatives
- Absence of alcohol intoxication *
- Primary diagnosis is not MR *
- R/O delirium and dementias

DELIRIUM AND DEMENTIA

- **DELIRIUM**

- Rapid Onset
- Fluctuating Course
- Medical Emergency
- Immediate Medical Treatment

- **DEMENTIA**

- Insidious Onset
- Medical Guardianship
- Medical Treatment

ALCOHOL SERVICES ACT

- **ETOH INTOXICATION**
 - Substantial impairment of physical / mental functioning due to the presence of ETOH in the person's system
- **ETOH INCAPACITATION**
 - Matter of degree, level of intoxication (or mental confusion resulting from withdrawal) that creates threat of harm to self or others



CRITERIA FOR LODGING AN INCAPACITATED PERSON



- Incapacitation
- Protective Custody:
 - No serious legal offense
 - Detox facility unfeasible
 - Refuses voluntary treatment or transport
 - Leaves AMA with BAC
- Mandatory Screening by ETOH or Medical Staff
- 24-hour Rule

Under 18 Years of Age

- A Youth Under 18 years of Age That is Incapacitated Must Be Released to An Adult (Willing to Take Responsibility For the Youth) – Not Limited to Family
- Public Inebriate Screener Should Also Be Called To Evaluate the Youth For Possible Alternatives to Incarceration

TARASOFF

- DUTY
TO
WARN

Peck v. CSAC



Vermont Duty to Warn

- A mental health professional who knows, or should know that his/her patient poses a serious risk of danger to an identifiable victim has a duty to exercise reasonable care to protect him/her from that danger

– Peck v. CSAC (1985)

INVOLUNTARY PSYCHIATRIC ADMISSION INSTRUMENTS

- **Immediate disposition**
- PPV or SV Revocation
- Emergency Exam
- Warrant
- Court Ordered Inpatient Evaluation
- Conditional Release Revocation
- **Delayed Disposition**
- Non-Emergency Exam
- ONH Revocation

EMERGENCY EXAM

- Determines if person is in need of treatment
- Psychiatrist and QMHP are applicants
- QMHP or police: temporary custody and transportation
- Certifying physician evaluates within 24 hours
- Client detained for 72 hours or released to site of origin or reasonable destination

EMERGENCY EXAM

- Must meet **ALL** criteria:
 - Mental illness (not MR)
 - Danger to self or others
 - No less restrictive alternatives
- 2 applicants (QMPH and psychiatrist)
- VSH consultation / notification
- Consult with other CMHC PRN

WARRANT

- Meets **ALL** criteria
- MD unavailable without serious or unreasonable delay
- Police or QMHP are applicants
- Based on direct observation
- Immediate risk of serious injury to self or others
- A **JUDGE** must authorize
- VSH consultation and notification



EE AND WARRANT COMPARISONS

- **EMERGENCY EXAM**

- MD available
- Narrative
- Direct observation
- Reliable reports
- QMHP and MD are applicants
- No judge involved
- Immediate exam

- **WARRANT**

- MD unavailable
- Immediate risk of serious injury to self or others
- Narrative
- Direct observation or
- Police report
- QMHP or police is applicant
- Judge must authorize exam
- Immediate exam

NON-EMERGENCY EXAM

- Application for Involuntary Treatment (AIT)
- Not typically a QMHP responsibility in many CMHC's
- “Interested party” (could be QMHP) and psychiatrist are applicants
- Judicial review required
- Filed in Family Court
- Can take 4-6 weeks

NON-EMERGENCY EXAM

- NON-EMERGENCY EXAM:
 - Does not meet all criteria
 - Heavy emphasis on historical pattern of decompensation yields reasonable prediction...
 - Psychiatrist and interested parties are applicants
 - Filed in Family Court
 - Delayed disposition

COURT ORDERED INPATIENT PSYCHIATRIC EVALUATION

- Legal charges pending
- Questions raised:
 - Sanity
 - Competency
 - Safety
- Screener's responsibility is to determine if this is "a person in need of treatment"



TRANSPORTATION

- CHECKLIST
- QMHP determines whether transport is secure or non-secure
- Secure Transport Must Be Justified
- Secure Transport Must Be Documented
- *Fax Form to DMH - Not VSH*
- Fax – (802) 652-2005

Secure Transportation of Child Age 10 or Below

- Approval of such transport (via sheriff or police) must be requested of the Commissioner of Mental Health either at DMH (951-1258) during regular business hours or through VSH Admissions Office (241-1000) otherwise.

INVOLUNTARY CARE DISCHARGE TERMINOLOGY

- Short Visit (SV)
- Pre-placement Visit (PPV)
- Conditional Release
- Administrative Discharge
- Order of Non-Hospitalization (ONH)

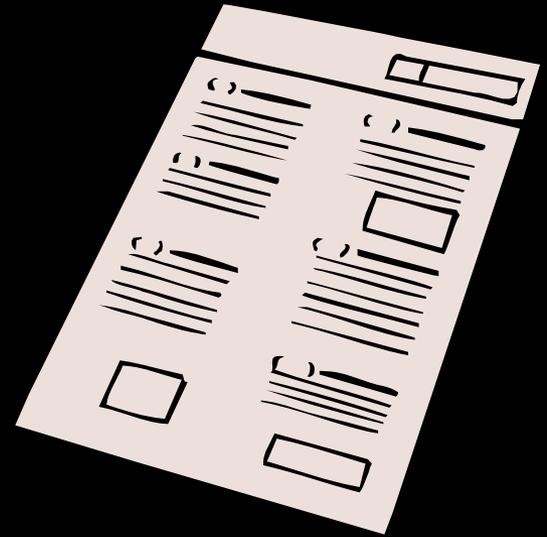
DOCUMENTATION



- Legal document
- Identifies potential witnesses
- Provides foundation for the case

DOCUMENTATION OUTLINE

- Personal profile
- Presenting complaint
- History of present illness
- Mental Status Exam
- Neuro-veg symptoms
- Substance abuse
- Risk assessment
- Relevant psycho-social
- Assessment / disposition



DOCUMENTATION TIPS

- Be specific and descriptive:
 - I observed
 - As evidenced by
- Avoid vague terminology
- Use quotes
- Name sources
- Cite interview location
- Specify criteria for involuntary admission
- Proofread, sign and date



OOPS



- No context provided
- Fails to name source
- Incorrect application
- Location of screening not identified
- Vague terminology
- Unsigned application
- VSH admissions never informed of admission

PROPOSED DISPUTE RESOLUTION

- QMHP consults supervisor
- Supervisor disagrees with MD
- MD consults CMHC MD
- MD and non-subordinate EE
- Certifying MD assessment
- Person detained or released



TESTIFYING

- AAG will talk with you ahead of time
- Review your ee paperwork
- Tell the truth
- Not your job to “win” the case
- Not like T.V. !!!

CONTACTS

- AAG'S MENTAL HEALTH LEGAL DIVISION: 657-4310
- Kristin Chandler: 657-4314
- Ira Morris: 657-4315
- Matt Viens: 657-4316
- Steve Kroll, paralegal: 657-4311
- Jennifer Stadnik, paralegal: 657-4312
- Joyce Brabazon forensic paralegal: 657-4309

Quiz

1. What is the role of the QMHP in regard to a screening in District Court?
2. Who, besides a QMHP, can apply for a Warrant for Immediate Exam?
3. When does a screener fill out a transport check list?
4. Name four ways a person can demonstrate they are a danger to self or others as a result of a mental illness.
5. Who is the approval authority for involuntary transportation of a youth 10 years old or under?

continued...

...Quiz continued

6. Who are two applicants for an emergency exam in Vermont?
7. Name three things critical to include in an EE write up.
8. What is a screener's role when writing papers for an EE?
9. What should a screener do if the psychiatrist does not agree that the patient meets EE criteria?
10. What involuntary care instrument is required when a psychiatrist is not available for a psychiatric exam?