

Pennsylvania Mental Health Laws and Regulations: relevant excerpts for emergency physicians (short version)

--Keith Conover, M.D., FACEP August 19, 2009

a. Minors 14 Years and Older (recent change)

(1) By Consent of the Minor

A minor who is 14 years or older who believes that s/he is in need of treatment and substantially understands the nature of treatment may consent to voluntary inpatient mental health examination and treatment. ... The consent of the minor's parent or legal guardian is not necessary; neither can a parent or legal guardian abrogate consent given by a minor on his or her own behalf.

Act 147 does not change the ability of a parent or legal guardian to object to a minor's inpatient mental health treatment provided pursuant to a minor's consent on his or her own behalf.

...

(2) By Consent of the Parent or Legal Guardian

Prior to the enactment of Act 147, with respect to voluntary inpatient treatment, the consent of a parent or legal guardian was **not** valid for a minor 14 years or older. With the enactment of Act 147, which amends the Minor's Consent Act and not the MHPA, a parent or legal guardian can consent to inpatient mental health treatment for minors 14-17 years of age on the recommendation of a physician who has examined the minor, and over the objections of the minor. A minor may not abrogate the consent provided by a parent or legal guardian on the minor's behalf. A parent or legal guardian who has provided consent to inpatient mental health treatment may revoke that consent, unless the minor 14-17 years of age has provided consent for continued inpatient mental health treatment.

Under Act 147, when a minor has given consent on his or her own behalf and then revoked that consent, the revocation is **not** effective if the parent or legal guardian has consented to continued treatment on the recommendation of a physician who has examined the minor.

...

b. Minors under the age of 14

The parent or legal guardian of a minor who is younger than 14 years of age may consent to voluntary inpatient mental health examination and treatment for the minor. In such cases, the parent/guardian shall be deemed as acting for the minor. The consent must be voluntary and in writing, and obtained after the parent or legal guardian is given an explanation of the prospective treatment and his/her rights. The parent or legal guardian of a minor who is younger than 14 years of age may effect the release of the minor from a voluntary inpatient mental health facility. If the parent/guardian did not agree at admission to a delayed release provision, the parent/guardian may immediately withdraw the minor from the facility. If the parent/guardian did agree at admission to a delayed release, the same rules as described in the preceding section apply to the parent/guardian. Similarly, the parent/guardian of a minor younger than 14 years of age must consent to any transfers.

Pennsylvania Code Title 50 - Mental Health

This chapter became law as part of the Act of July 9, 1976

CHAPTER 15. MENTAL HEALTH PROCEDURES

ARTICLE I. GENERAL PROVISIONS.

7102. *Statement of policy.*

... Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed.¹ Persons who are mentally retarded, senile, alcoholic, or drug dependent shall receive mental health treatment only if they are also diagnosed as mentally ill,

but these conditions of themselves shall not be deemed to constitute mental illness: ...

7105. *Treatment facilities.*

Involuntary treatment and voluntary treatment funded in whole or in part by public moneys shall be available at a facility approved for such purposes by the county administrator ...

7114. *Immunity from civil and criminal liability.*

(a) In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person ..., shall not be civilly or criminally liable for such decision or for any of its consequences.

...

ARTICLE II. VOLUNTARY EXAMINATION AND TREATMENT.

7203. *Explanation and consent.*

... Consent shall be given in writing upon a form adopted by the department. ... that he consents to such admission voluntarily, without coercion or duress; and, if applicable, that he has voluntarily agreed to remain in treatment for it specified period of no longer than 72 hours after having given written notice of his intent to withdraw from treatment.

...

7206. *Withdrawal from voluntary inpatient treatment*

(a) A person in voluntary inpatient treatment may withdraw at any time by giving written notice unless, as stated in section 203, he has agreed in writing at the time of his admission that his release can be delayed following such notice for a period to be specified in its agreement, provided that such period shall not exceed 72 hours. ...

ARTICLE III. INVOLUNTARY EXAMINATION AND TREATMENT.

7301. *Persons who may be subject to involuntary emergency examination and treatment*

(a) *Persons Subject.* -- Whenever a person is severely mentally ill and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself.

(b) *Determination of Clear and Present Danger.* --

(1) Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm.

(2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

(i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii) the person has attempted suicide and that there is a reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present

¹ This is the section that basically says "if the patient signed a 201 (voluntary) you can't 302 them (do an involuntary commitment)."

danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance or the threat to commit suicide; or

(iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.

7302. Involuntary emergency examination and treatment authorized by a physician -- not to exceed seventy-two hours.

....

(b) Examination and Determination of Need for Emergency Treatment. -- A person taken to a facility shall be examined by a physician within two hours of arrival ... If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be released and returned to such place as he may reasonably direct.

**Pennsylvania Code, Title 55 - Public Welfare
Part VII - Mental Health Manual [Regulations]
Chapter 5100 - Mental Health Procedures
INVOLUNTARY TREATMENT**

5100.84. Persons who may be subject to involuntary emergency examination and treatment.

(a) Persons 14 through 17 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the person. Persons 5 through 13 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the child. Persons from birth through 4 years of age may be subject to involuntary emergency examination and treatment only in a mental health facility capable of providing a treatment program appropriate to the child. ...

(b) Persons 18 years of age and older may be subject to involuntary emergency examination at an approved facility designated for such purpose by the administrator. Involuntary emergency treatment may be provided at the examining facility or any other designated and approved facility appropriate to the person's needs. Travel arrangements between the examining facility and the treating facility shall be arranged as needed as soon as possible to permit transportation appropriate to the person's needs.

(c) The determination of whether the standards of clear and present danger are met should always include a consideration of the person's probable behavior if adequate treatment is not provided on either an emergency or subsequent basis.

(d) The standards of clear and present danger may be met when a person has made a threat of harm to self or others; has made a threat to commit suicide; or has made a threat to commit an act of mutilation and has committed acts in furtherance of any such threats.

(e) Examining physicians should consider the probability that the person would be unable without care, supervision, and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter or self-protection, and safety in accordance with section 301(b)(2)(i) of the act (50 P.S. 7301(b)(2)(i)).

(f) When the petition for commitment filed under section 301(b)(2)(i) alleges that a person poses a clear and present danger to himself, clinical or other testimony may be considered which demonstrates that the person's judgment and insight is so severely impaired that he or she is engaging in uncontrollable behavior which

is so grossly irrational or grossly inappropriate to the situation that such behavior prevents him from satisfying his need for reasonable nourishment, personal care, medical care, shelter or self-protection and safety, and that serious physical debilitation, serious bodily injury or death may occur within 30 days unless adequate treatment is provided on an involuntary basis.

...

The writing of suicide notes can be considered an overt act in furtherance of a suicide. *Mertz v. Temple University Hospital*, 29 Phila. 467 (1995).

...

5100.85. Standards.

The standards of section 301 of the act (50 P.S. 7301), for determination of severe mental disability and present danger are to be applied so as to determine whether emergency commitment is necessary under section 302 of the act (50 P.S. 302), or whether a court-ordered commitment under section 304(c) of the act (50 P.S. 7304(c)), is appropriate:

(1) The application of the standards in section 301 of the act, for emergency commitment, including the requirement of overt behavior, shall be based at least upon the following factors:

(i) There is a definite need for mental health intervention without delay to assist a person on an emergency basis;

(ii) The clear and present danger is so imminent that mental health intervention without delay is required to prevent injury or harm from occurring;

(iii) There is reasonable probability that if intervention is unduly delayed the severity of the clear and present danger will increase; or

(iv) There is reasonable probability that the person, with his presently available supports, cannot continue to adequately meet his own needs if mental health intervention is unduly delayed.

...

5100.86. Involuntary emergency examination and treatment not to exceed 120 hours.

...

(c) Any person authorized under section 302 of the act to take a person to a treatment facility for involuntary emergency examination and treatment shall explain to the person in need of such examination and treatment the nature and purpose of the action to be undertaken.

(d) The escorting individual shall make every effort to use the least force necessary and shall act to the extent possible in a courteous manner toward such individual giving attention to the dignity of the person. Transportation to and from a facility remains the ultimate responsibility of the administrator.

...

(1) The examining physician shall make certain that the person has received a copy of forms MH-782, Bill of Rights, and MH-783-A, Explanation of Rights Under Involuntary Emergency Commitment.

...

(3) When the examining facility recommends emergency involuntary treatment and has no bed available, the administrator in designating a facility for treatment, shall also authorize transportation between facilities.

(h) The administrator shall designate an appropriate treatment facility which may be the examining facility or, if no bed is available there, the nearest appropriate facility which is capable of immediately providing such treatment. If county OMH funding is not involved, the patient's choice of facilities is to be respected whenever an appropriate bed is available.