

Pathfinders for Autism Parent Training: Involuntary Admissions

November 10, 2016
Towson, Maryland
Hon. Georgia S. Brady¹

How Do I Obtain In-Patient Psychiatric Treatment for Someone Who is Unwilling or Unable to Agree to that Treatment?

Legal Standard: If an individual (a) has a mental disorder; and (b) presents a danger to his/her own life or safety or to the life or safety of others, and the individual will not voluntarily come to a mental health unit, the law **requires that an emergency petition** be issued in order to bring the individual to a mental health unit against their will.

Who Can Make/Get an Emergency Petition?

- (1) a **peace officer** who has **personally observed** the individual or the individual's behavior;
- (2) an **"interested person"** (non-medical professional; non-peace officer), **through an emergency petition approved by a court;** OR
- (3) a **licensed mental health professional** (physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, or a "health officer" or a designee of a "health officer") **who has examined or observed the individual or who has other information obtained that is pertinent to the factors giving rise to the petition.**

What Must the Emergency Petition Contain?

- Signature and verification by the petitioner

¹ Judge Brady is an Executive Administrative Law Judge with the Maryland Office of Administrative Hearings (OAH). She currently serves OAH as the Deputy Director of Quality Assurance. The information in this document does not constitute legal advice. It is intended as a supplement to the November 10, 2016 panel presentation for parents whose children may be subject to the involuntary admission process. All references to Maryland laws and regulations are to the version current on November 10, 2016.

- Petitioner’s name, address, home & work telephone numbers
- Patient’s name and description
- If possible, patient’s address, and identification of relative or other interested person
- License number of the medical professional, if completed by one
- Description of the behavior and statements of the patient or other information that led the petitioner to believe the patient has a mental disorder and presents a danger, as well as any other information that would support the need for an emergency evaluation

How is the Emergency Petition Executed?

- If petitioner is a health professional, by giving petition to a peace officer.
- If the petitioner is a non-health professional “interested person,” by presenting petition to a court for review. The court will endorse the petition if it finds “probable cause” that the patient has a mental disorder and is a danger to himself/herself or to others.
Maryland Code Annotated Health General sections 10-622, 10-623

What Happens After the Emergency Petition is Executed?

- A police officer will take the person to an emergency room where the person will be examined by at least two health professionals (physician, psychologist, psychiatric nurse practitioner) to determine if he or she should be certified for involuntary admission to a psychiatric facility. Maryland Code Annotated Health General section 10-616.
- If medical professionals believe that the person needs to be treated in the in-patient facility for ten days or more, and the person is unable or unwilling to voluntarily agree to be admitted to the facility, the person will be placed on a schedule for a hearing before an Administrative Law Judge

What is the Judge’s Authority?

- The Judge must conduct a hearing at the inpatient facility and issue a decision on involuntary admission within a **maximum** of 17 days from the date the patient was admitted. (Initial hearing must be scheduled within 10 days, but may be postponed, for good cause, once, for 7 days)

- The Judge must:
 - Consider all evidence and testimony presented
 - Rule on issues raised that relate to the process by which the patient was taken into the hospital and confined
 - Give a copy of the decision to the hospital, the public defender, the patient (or the patient's medical record), and, if the individual is a minor, to the individual's parent or guardian, if either is present at the hearing.
 - The Judge has to **order the release of the patient** UNLESS the evidence demonstrates by **CLEAR AND CONVINCING EVIDENCE** that the patient:
 - Has a Mental Disorder
 - Needs In-Patient Care or Treatment
 - Presents a Danger to the life or safety of the patient or to others
 - Is Unable or Unwilling to be Voluntarily Admitted to the facility
 - Has NO Available Less Restrictive Form of Intervention Consistent with his/her Welfare and Safety

Health General section 10-632

- The Judge must also **order release** of the patient if:
 - **A substantial error in the process occurred; and**
 - **No other available remedy is consistent with due process and the protection of the individual's rights.** Code of Maryland Regulations (COMAR) 10.21.01.09
- ***If the Patient is released due to a substantial error,*** the patient's physician may file a new emergency petition, ***after*** the patient has been given the opportunity to leave the inpatient facility. COMAR 10.21.09.10

What Kinds of Errors Might Be Considered Substantial?

- Errors may be substantial, or NOT substantial, in different cases. The Judge can only determine if an error is substantial based on the facts in each case.
- Some errors that MIGHT be considered substantial could be:

- The absence of an emergency petition or a defective emergency petition
- Violation of statutory or regulatory timelines, for example:
 - Six Hours after being brought to an emergency room: patient is to be examined to determine if he or she meets the criteria for involuntary admission. Health General section 10-624
 - Thirty Hours after initial entry: Maximum length of stay in hospital emergency department. Health General section 10-624
 - Ten Days after initial confinement in a mental health facility: Hearing to determine if patient should be involuntarily admitted. One postponement, for good cause, for no more than 7 days, is permitted. The hospital must bring a patient to a hearing within these timeframes to permit an Administrative Law Judge to hold the legally required hearing. Health General section 10-632.

Where is the Hearing Held and What Does it Look Like?

- The hearing is held at the in-patient facility where the Patient is being treated. The hearing room, usually a conference room, may not be used for anything else during the hearing, must have sufficient space to accommodate anyone participating in the hearing, and must have a speaker-phone. The Judge will record the hearing and place all witnesses under oath.
- The Office of Administrative Hearings has hearing dockets at approximately 35 hospitals each week. Each in-patient facility in Maryland has specific dates and times scheduled for these hearings; there is usually more than one hospital scheduled on a Judge's docket. Sheppard Pratt in Towson is the only hospital on the docket of the Judge assigned there on Wednesdays, but there can be 30+ hearings scheduled on that day. Most cases resolve without going to a hearing, but it is still a long wait for a hearing.

- The Judge will not know about any witnesses to the hearing unless the representative of the hospital or the public defender tells the Judge and calls the witnesses. The Judge does not call witnesses on his/her own. If you want to testify, tell the caseworker/doctor/hospital presenter.
 - The testimony of family members is very helpful to the Judge, but can be very hard for family members.
 - If you are willing to testify, plan to either take the whole day off from work or arrange a time with the hospital when you can be available to testify by phone.
- The only person who is legally *required* to testify at the hearing is the psychiatrist, psychologist, or doctor in an accredited psychiatric residency program working under the supervision of the psychiatrist treating the patient. Each of these people who testify must have examined the patient within 48 hours before the hearing.
- The patient or his/her attorney can waive the patient's presence at the hearing.
- The hospital will typically be represented by a non-lawyer. The patient is typically represented by an assistant public defender.
- Sometimes there will be law students, judges in training, medical or nursing or social work students as observers in the hearing. The patient may object to these persons being present.
- The hospital will call its witnesses first; each will be questioned by the hospital representative and then by the patient's attorney. Then, the patient's attorney may call witnesses. Sometimes the patient's attorney calls the patient as a witness, sometimes not. Each side will have an opportunity to present a closing argument.
- After hearing from both sides, the Judge will issue a verbal and a written decision.
- The written decision will include a summary of the Judge's findings on each legal issue and an explanation of how the decision can be appealed.