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# New York Hospital Dilemma: Admitting and Treating Patients with Mental Illness

## Presenters

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# Agenda

- Hospitalization of patients with symptoms of mental illness brought to Emergency Departments of General Hospitals.
- Hospitals that treat mentally ill patients in Comprehensive Psychiatric Emergency Programs (CPEP).
- Hospitalization of patients with symptoms of mental illness in Inpatient Psychiatric Hospitals.
- Treatment of mentally ill patients lacking capacity.
- Outpatient treatment.
- Court hearings and process.

 

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# What If The Patient Is Not Cooperative?

## Getting The Patient To The Hospital

# Involuntary Inpatient Hospitalization: How does it begin?

- Who calls for help?
- There is a long list of people who can start the process of getting an acutely mentally ill person to a hospital for evaluation/retention.
- A neighbor, family member or other concerned person can call 911 and request a “well-check”, whereby police and/or emergency medical services can asses the individuals safety in the community and ultimately bring the individual to a hospital for an evaluation.
- A mobile crisis team, a group of behavioral health professionals, can be called and will provide an in-person visit within a few hours of receiving a referral. If the team determines that a person in crises requires further psychiatric assessment, they can arrange for transport to the hospital for evaluation.

 

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# Who Initiates Hospitalization (continued)?

- "Director of Community Services" or designee (e.g., supportive housing director) may direct the removal of any person to a hospital or CPEP program, similarly a parent, adult sibling, spouse or child of the person, legal guardian, licensed psychologist, RN or CSW currently providing treatment, supportive or ICM, MD, health officer or police officer reports that the person has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others.
- For persons housed in a shelter, nursing home, or other congregate care environment, staff can call a mobile crisis team or an ambulance for hospital transport.
- A physician or qualified mental health professional who is a member of an approved mobile crisis team has the power to remove any person to a 9.39 hospital or CPEP for purpose of evaluation for admission, if such person appears to be mentally ill and demonstrates conduct which is likely to result in serious harm to self or others.

 

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# Who Initiates Hospitalization (continued)?

- Qualified psychiatrists in an outpatient clinic not affiliated with a psychiatric hospital and medical doctors in emergency rooms of a general hospital may, upon confirming that a patient meets the appropriate standard, direct police or ambulance service to take into custody and transport a patient to a 9.39 hospital or CPEP program.
- Individuals may obtain police or ambulance assistance (EMS).
- Any police officer who is a member of the state police or an authorized police department, or a sheriff's department, may take into custody any person who appears to be mentally ill and conducting himself/herself in a manner which is likely to result in “serious harm” to self or others, and transport such person to a hospital or CPEP.

 

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# Mental Hygiene Warrant

- In New York, family members and other concerned individuals may make an application to the court to begin the process of a person's hospitalization and request that the court issue a "mental hygiene warrant" directing that a person who is alleged to be mentally ill and dangerous be brought before the court.
- The person requesting the warrant must sign a verified statement stating that the person is mentally ill and acting in a manner which is likely to result in serious harm to self or others (will be required to cite examples).
- The alleged mentally ill person will be brought before the court and, if it appears based on the evidence presented that this person may have a mental illness which is likely to result in serious harm to self or others, the court can issue an order directing that he or she be brought to a hospital for evaluation to determine if he or she meets criteria for emergency admission under MHL 9.39.

 

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# How Long Can The Patient Be Retained?

## Overview Of The Rules Around Involuntary Retention

# The  Legal Retention Statuses(under MH Law)

- Emergency admission- Section 9.39
- Emergency observation in CPEP –Section 9.40
- Involuntary admission-Section 9.27 (also known as “2PC”)
- Voluntary admission - Section 9.13
- Informal admission- Section 9.15 (not used)
- OMH materials in your packet – the OMH website has a quick-reference overview of the processes related to each admission status.



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# Emergency Admissions- General Hospital

- Persons experiencing symptoms of mental illness may walk into or be brought to an **Emergency Department of a General Hospital** that does not operate an inpatient psychiatric unit. Some hospitals are unauthorized to treat mentally ill patients due to a lack of services available to treat such patients (e.g., and inpatient psychiatric unit).
- New York Mental Hygiene Law (MHL) 9.57- Provides that a staff physician (not necessarily a psychiatrist) must examine the patient in an ED and has authority to request the removal and transfer of that patient to a hospital approved by Office of Mental Health under MHL 9.39, or to a Comprehensive Psychiatric Emergency Program, if the physician determines that the patient appears to have a mental illness for which care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others.

 

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# MHL 9.39- Emergency Admission for Immediate Observation Care and Treatment : A Higher Standard

- MHL 9.39 - sets the standard for emergency psychiatric hospitalization. Individuals alleged to have a mental illness can be retained in a Hospital for up to 15 days for observation, care and treatment. The criteria for retention under this status includes showing how the patient has engaged in a recent overt dangerous act or behavior.
- "Serious harm" is defined as the likelihood of physical harm to self or others as manifested by threats of, or, attempts at suicide or serious bodily harm to self, or homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.
- Serious harm to self can also be shown as the patient's inability to meet his/her essential needs for food, clothing, shelter, or health care.

 

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# Duration of Emergency Admission

- Patient may be held for a period not to exceed 15 days from the date of admission.
- If the Hospital determines that the patient requires further inpatient hospitalization beyond the 15–day emergency admission period, the patient must be converted to an Involuntary Admission status under the “2 PC” process.
- Patient may request a court hearing to challenge the admission (MHL 9.39).
- Patient will be assigned legal counsel through Mental Hygiene Legal Service (“MHLS”). MHLS is an independent arm of the Appellate Division made up of attorneys who work as the dedicated voice of the mentally ill population and whose mission it is to ensure their clients’ constitutional due process rights are protected.



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# What is a Comprehensive Psychiatric Emergency Program ("CPEP")?

- Psychiatric emergency care in New York State was historically provided primarily in the emergency rooms of general hospitals and often resulted in overcrowded emergency rooms and over-utilized acute inpatient hospitalization services. An increase in the use of emergency rooms in the 1980s raised concern about the timeliness, quality, and continuity of care for those in need of psychiatric emergency services.
- CPEPs provide triage, observation, evaluation, care, treatment and referral in a safe and comfortable environment for those individuals with a known or suspected mental illness. They provide a full range of psychiatric emergency services and crisis outreach services within a defined geographic area to individuals experiencing symptoms of a behavioral health crisis including co-occurring disorders. These co-occurring disorders may include substance use disorders, intellectual and developmental disabilities, and medical conditions.



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# Comprehensive Psychiatric Emergency Program- CPEP

- Criteria under MHL 9.40 is the legal status relied on for patients with mental illness being treated in a CPEP and is used when an inpatient bed is not available in the short-term.
- CPEP is a short term – maximum 72 hour –program for observation, care and treatment.
- If it is determined that the patient needs further care, the Hospital may admit the patient to an inpatient unit, either on an involuntary status under MHL 9.27 (“2 PC”) or emergency status under MHL 9.39.
- The patient may request a court hearing to challenge admission and is entitled to legal counsel – generally, this is MHLS, although patients may retain their own legal counsel (which is, however, rare).

 

# Involuntary Admission under MHL 9.27- a/k/a 2 Physician Certification Status ("2PC")

- A patient may be admitted on an involuntary status if the patient has a mental illness for which care and treatment in a mental hospital is essential for the patient's welfare; the patient's judgment is too impaired for the patient to understand the need for such care and treatment; AND as a result of the mental illness, the patient poses a *substantial threat of harm to self and/or others.*
- Notice the different standard between MHL 9.27 and MHL 9. 39: "substantial" threat of harm to self and/or others vs. the likelihood of "serious" harm to self and/or others.
- A patient admitted on an Emergency Admission status may be converted to Involuntary Admission status on the basis of the "2 PC" process if the patient meets the criteria. To, retain a patient admitted on Emergency Status past 15 days , the certifications admitting the patient must be completed by 2 physicians "other than one of the two original certifying MDs" to the Emergency Admission.

 

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# Involuntary Admission – Who Can Start The “2 PC” Process

- Persons who may “apply” for the patient’s admission (OMH form 471, Part A) include:
  - any person with whom the patient resides;
  - family member – immediate family or nearest relative available;
  - Committee of such person (e.g.- guardian)
  - qualified psychiatrist - supervising or treating the patient in a facility licensed or operated by OMH (e.g. outpatient mental health clinic);
  - director of hospital where patient is hospitalized;
  - director of facility providing alcohol or substance abuse treatment to patient;
  - director of public or well-recognized charitable institution or agency or home, in whose institution the patient resides;
  - person having legal custody of a child (e.g. pursuant to court order);

 

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# Applicants under - 9.27 continued

- Social Services official or agency for child 16 years and older in protective custody under SSL 384-a
- The director of the division for youth, acting in accordance with the provisions of section five hundred nine of the executive law;
- Subject to the terms of any court order a person or entity having custody of a child (pursuant to family court act).

- Each of these persons can “apply” for the patient’s involuntary admission, which then must be certified by two separate physicians.



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# Involuntary Admission – 2PC Process (cont.)

- Upon "application" to the Hospital (Part A), medical certification must be completed by two physicians (hence "2PC") who examine the patient and execute separate certifications that state the facts forming the basis of the physicians' opinion that the patient meets the involuntary admission standard.
- "Substantial threat of harm" may encompass (i) the patient's refusal or inability to meet his or her essential need for food, shelter, clothing or health care, or (ii) the patient's history of dangerous conduct associated with noncompliance with mental health treatment programs.
- **Staff psychiatrist of inpatient psychiatric hospital** will then examine the patient and confirm that patient meets the involuntary admission standard (sign and date part B of 9.27).

 

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# Duration of Hospitalization Under The 2PC Standard

- A patient may be held on an involuntary status (2 PC) for up to 60 days from the date of admission.
- The patient may request a court hearing to challenge the involuntary admission at any time during the hospitalization (MHL 9.31). If retained by the court, the patient may "get a second bite of the apple" by requesting a review and rehearing (including the right to a jury trial) under MHL 9.35.
- If the patient will not consent to stay past the 60 days, but requires additional time beyond the initial 60 day retention period, **the hospital must file a request for continued retention** with the court. The court will decide at a hearing if the patient would pose a substantial threat of harm to self or others if discharged. This further involuntary retention period may not exceed six months - MHL 9.33.
- Patient will be represented by MHLS.

 

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# Voluntary Admission Under MHL 9.13

- An adult patient, or the parent of a minor patient, may sign a written application (OMH form) for admission to a psychiatric hospital as a voluntary patient - meaning the patient has willingly made a written application for treatment for mental illness.
- The patient must have a mental illness for which care and treatment in an acute-care hospital setting is appropriate and be suitable for admission.
- NOTE: The term “voluntary” is misleading, as the patient cannot just walk out following admission. A voluntary patient who wishes to leave the hospital must notify staff and the hospital then has 72 hours to either release the patient or the Hospital must file an application for court order of involuntary retention (MHL 9.13B).
- Every patient is entitled to representation by Mental Hygiene Legal Service (MHLS)

 

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# What Happens In Court?

## Overview Of The Court Process And The Risks Associated With Missing MHL Deadlines

# The Court Process Generally

- Article 9 provides several opportunities for both patients and the hospital to bring matters before the courts. Any patient who is not cooperating with retention and/or treatment may appear before a court several times during a single admission.
- Its critical that the treatment team view the court process as “part and parcel” of treatment, not separate from it. It is their means of keeping the patient in the hospital, and of treating the non-consenting patient.
- Real risks arise from a poor understanding of court processes and the statutory deadlines related to each patient’s admission status. Is the patient on an emergency admission under 9.39 or involuntary under 9.27? Are they voluntary and wanting to leave, but the treatment team feels they aren’t ready? Each differing status impacts when the hospital must act to legally continue treatment.

 

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# The Danger Of Patients Out of Legal Status: *People Ex Rel. Delia v. Munsey*

- In New York, it is crucial that Hospitals treating involuntary psychiatric patients remain mindful of statutory deadlines and dates of admission because the Court of Appeals has held that if a hospital fails to comply with the status regulations, a patient has the right to petition the court for release pursuant to a "writ of habeas corpus."
- Involuntary patients, for example, retained under MHL 9.27 may remain in a hospital without court approval for up to 60 days. If further retention is needed, the hospital must seek court approval for the patient's continued retention (MHL 9.33). If the hospital fails to request a court hearing during the patient's previous legal retention period, however, NY law says that the court will likely discharge the patient, regardless of his or her psychiatric condition.

 

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# Liability for Hospital and Mental Health Providers

- This case law increases the potential for liability for both psychiatrists and hospitals if the patient becomes self-injurious or injures another person when discharged based upon a writ of habeas corpus.
- The *Munsey* case settled the question of "which writ?" MHL 33.15 or CPLR Art. 70?
- It is unclear today what a Hospital can do, if anything, to remedy a mistake. The Court in its decision in *Munsey*, stated, "If a facility is of the opinion that a patient requires further treatment notwithstanding having been granted a writ of habeas [corpus] pursuant to CPLR article 70 following an illegal detention, it is incumbent upon the facility to commence a new article 9 proceeding in compliance with the strictures of the Mental Hygiene Law."

 

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# What If The Patient Refuses Treatment?

## Overview Of Treatment Over Objection

# Presumption of Capacity

- Every adult is presumed to have decision-making capacity to make health care decisions, unless determined otherwise by a physician or court.
- Capacity does not mean that the person is free from all mental impairment.
- Capacity is presumed notwithstanding that the patient is hospitalized on a psychiatric unit or that the patient suffers from a mental illness or mental disability.
- Every adult with decisional capacity has the right to consent to or refuse medical treatment even if that decision will result in the patient's death.
- The right to refuse treatment is a liberty interest protected by the due process clauses of the New York State and U.S. Constitutions.



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# Medical Decision-Making Capacity - Definition

- Capacity is defined as the ability to:
- (1) factually and rationally understand and appreciate the nature of proposed treatment, including the benefits, risks and alternatives to the proposed treatment, and,
- (2) to make a reasoned decision about undergoing the proposed treatment.

 

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# Can a Hospitalized Patient Be Treated Over Objection?

- Except for an emergency, a patient on an inpatient psychiatric unit cannot be treated over his or her objection, absent a court order.

- A health care agent, family member and legal guardian have **no legal authority** to override a patient's objection to treatment.

- Seminal case: *Rivers v. Katz* 67 NY2d 485 (1986)



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# Hospitalized Patient: Expedited Legal Process

- For patients held on inpatient psychiatric units, there is an expedited legal process that the Hospital can follow to seek a court order authorizing treatment over objection. The process can be implemented solely for patients held on an involuntary status, who are currently refusing treatment that their treatment team determines is needed.
- Basic due process applies and the patient is entitled to notice and a court hearing.
- Administrative procedures set forth in OMH regulations must be followed first. Once administrative requirements are met, the hospital can apply to court for an order authorizing treatment of the patient over their objection.
- Treatment can include medications and other treatments, like ECT (electroconvulsive therapy).
- Legal counsel – MHLS is assigned to represent the patient throughout the process.

 

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# Effect and Duration of Court Order

- The court order expressly authorizes the hospital and its physicians and staff to administer to the patient, over his/her objection, certain specified treatment.
- Except for an emergency, medication and treatment that are not specified in the court order can not be administered without the patient's consent or cooperation.
- The court order is only effective during hospitalization and often limited in time to the duration of the current involuntary retention period.

 

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# Minors and Treatment for Mental Illness

- There are special concerns and rules that apply to the hospitalization and treatment of mental illness of minors.
- Under certain limited conditions, a mental health practitioner may provide outpatient mental health services to a minor voluntarily seeking such services without parental or guardian consent.
- As clinically appropriate, steps must be taken to actively involve the parents or guardians.

 

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# What Happens After Discharge?

## Can Outpatient Treatment Be Ordered By The Court?

# Outpatient Mental Health Treatment

- Participation in outpatient partial hospitalization programs, continuing day treatment programs, and outpatient mental health clinics is voluntary.
- Once discharged, the patient must also voluntarily continue medications.
- Similarly, participation in alcohol and substance abuse treatment is voluntary. The director of a substance abuse treatment program cannot compel a patient to participate in or complete a treatment program, although a patient's failure to complete treatment required by judicial mandate may have other consequences under the terms of such mandate.
- The exception is an "assisted outpatient treatment" (AOT) order.

 

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# Can a Court Order Be Obtained for Outpatient Treatment?

- If an adult person has a history of non-compliance with mental health treatment, the court may grant an Assisted Outpatient Treatment Order (AOT) mandating that the person comply with outpatient treatment in accordance with a specified plan.
- The applicable statue in New York for “Assisted Outpatient Treatment (AOT)” is often referred to as “Kendra’s Law.”
- AOT is meant to provide a less restrictive alternative to involuntary hospitalization.



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# Who Can Apply for an AOT Order?

- Person with whom the person resides
- Parent, spouse, adult sibling, adult child
- Director of hospital where a person is hospitalized
- Director of any public or charitable organization, agency or home providing mental health services to the person
- Qualified psychiatrist – treating or supervising treatment of the person
- Director of public or charitable organization, agency or home providing mental health services to person
- Psychologist or social worker providing treatment to person
- DOCS or designee
- Parole officer or probation officer assigned to person

 

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# Criteria For AOT Order

**Person must meet all of the following criteria:**

1. at least 18 years of age;
2. suffering from a mental illness;
3. unlikely to survive safely in the community without supervision;
4. meet one of the two following criteria:
   - a history of non-compliance with treatment that has resulted in at least 2 psychiatric hospitalizations within 36 month period; or
   - a history of non-compliance that has resulted in one or more acts, or attempts at, serious physical harm to self or others within the last 48 months;
5. unlikely to voluntarily participate in outpatient treatment;
6. in view of history, need AOT Order to prevent a relapse; and
7. likely benefit from an AOT Order.

 

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# What type of Treatment May Be Included In An AOT Order?

- Case management services or assignment of an ACT team
- Outpatient mental health services – partial hospitalization, continuing day treatment, mental health clinic and counseling
- Psychotropic medication with medication management
- Substance abuse counseling and treatment, and may include relevant random blood and urine tests
- Supportive housing or supervision of living arrangements.

 

# Legal Process For Obtaining An AOT Order

- Application for an AOT Order is a formal legal process.
- Requires notice and a court hearing
- Person subject of petition may request jury trial
- Person is entitled to legal counsel – MHLS
- AOT can be used as a discharge planning tool for hospitalized patients or as a community resource to support and supervise mental health treatment outside of a hospital setting.

 

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# What if the Patient Fails to Comply with AOT Order?

- If the person fails or refuses to comply with AOT treatment, refuses to take medication, or refuses or fails a blood test or urinalysis, the DOCS or designee, may direct police, an ambulance service or Mobile Crisis Team to take the assisted outpatient into custody and transport him or her to a hospital operating the AOT program, or any other hospital authorized by the appropriate DOCS, for evaluation for inpatient admission on an involuntary or emergency status.
- The person may be retained for up to 72 hours.

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# QUESTIONS?

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