

Legal Issues in the Emergency Exams (EE): Training for Physicians

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Topics you will learn:

- Applicable statutes
- Applicable procedures
- What forms to complete
- What resources to access

VPCH ADMISSIONS OFFICE

Vermont Psychiatric Care Hospital's (VPCH) Admissions office serves as the hub and coordinator of all Emergency Exams in the state.

- Admissions specialists are available 24 hours a day, year round
- Qualified Mental Health Practitioners (QMHPs) must notify the Admissions office of all EEs.
- Admissions Specialists at VPCH are also a resource to get information/answer questions as well as to reach DMH staff afterhours.

(802) 828-2799

VERMONT MENTAL HEALTH STATUTE

- **Definitions:**

- Emergency Examination (EE) - to determine if he or she is a person in “need of treatment” (see definition below)
- 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
- Person in Need of Treatment - A person who is suffering from mental illness and, as a result of that mental illness, his or her capacity to exercise self control, judgment, or discretion in the conduct of his or her affairs and social relationships is so lessened that he/she poses a danger of harm to himself or others.
- Danger to Self –
 - Threatened or attempted suicide or serious bodily harm; or
 - Has behaved in such a manner as to indicate that patient is unable, without supervision and the assistance of others, to satisfy the need for 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.

VERMONT MENTAL HEALTH STATUTES

- 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
- Warrant –
 - A QMHP (*or police officer*) determines through face-to-face evaluation that the individual meets all above criteria and is deemed by statute to be a '*Person in Need of Treatment*' (18 V.S.A. § 7101).
 - Foundation of case is based on personal observations of the applicant
 - A psychiatrist is not available without serious or unreasonable delay.

Emergency Examination

- **§ 7504 (a)**: upon written application by an interested party accompanied by a certificate by a licensed physician who is not the applicant, a person shall be held for admission to a hospital for an emergency examination to determine if he or she is a 'Person in Need of Treatment'. The application and certificate shall set forth the facts and circumstances that constitute the need for an emergency examination and that show that the person is a 'Person in Need of Treatment'.

Criteria for Emergency Exam

1. Presence of mental illness (see slide 4 for definition) as defined by Vermont Statute (intellectual disability is **NOT** the primary diagnosis).
2. Danger to self or others.
3. Absence of less restrictive alternatives.
Must specify what alternatives were considered and why they were ruled out.

All conditions must be met)

Interested Party (Applicant)

Although the law allows for several groups to serve as an Interested Party (including law enforcement, family etc.) the Department of Mental Health has established criteria for quality assurance on who may serve as an Interested Party. Trained clinicians serving in this role are designated as Qualified Mental Health Practitioner (QMHP)

- QMHP – Qualified Mental Health Practitioner (this is a designation given by the Vermont Department of Mental Health)
- Physician – A physician can be an applicant but the preference is to follow the process and allow the QMHP to do the application

Process: Emergency Exam

- A QMHP and a Physician (Psychiatrist or a designated Non-psychiatrist physician) determine through face-to-face evaluation that the individual meets all above criteria and is, under the statute, a *'Person in Need of Treatment'* (18 V.S.A. § 7101).



- DMH reviews all EE paperwork for completion and submission to court
- After completion of this process a patient may be involuntarily held at a hospital for up to 72 hours pending application to court. The court will determine if criteria were met and person can be committed to the care and custody of the commissioner.

Involuntary Treatment Law

The involuntary hospitalization is a serious matter and not to be taken lightly. There are protections for patients so that this process is not abused.

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 - Recap

- Existence of mental illness
- Danger to self / others
- Absence of less restrictive alternatives (QMHP can assist in determining these)
- Absence of alcohol intoxication *
- Primary diagnosis is not an Intellectual Disability
- R/O delirium and dementias

* Substance intoxication and intellectual disabilities are not considered mental illness for these purposes

EMERGENCY EXAM

- Must meet **ALL** criteria:
 - Mental illness (not Intellectual Disability)
 - Danger to self or others
 - No less restrictive alternatives (Specify what considered and ruled out)
- 2 applicants (QMHP and physician)
 - 2nd certification by psychiatrist at holding hospital
- VPCH Admissions office must be notified (usually done by QMHPs)

WARRANT



- Still must meet **ALL** criteria of an EE
- Must demonstrate MD is unavailable without serious or unreasonable delay
- Police or QMHP are applicants
- Based on direct observation
- Immediate risk of serious harm
- A **JUDGE** must authorize the warrant
- Judge is authorizing the person to be brought to a physician (often in emergency room but not always). Physician must still do an independent assessment
- VPCH consultation and notification

EE AND WARRANT COMPARISON

• **EMERGENCY EXAM**

- MD available
- Narrative
- Direct observation
- Reliable reports
- QMHP is the applicant
- No judge involved
- Immediate exam

• **WARRANT**

- MD unavailable
- Narrative
- Direct observation
- QMHP/police is applicant
- Judge must authorize exam
- Immediate exam

DOCUMENTATION



- The Emergency Exam form is a legal document and will be submitted to court ([click here](#) for a copy of form MH-11)
 - Section II is physician section
- As of July 2014, courts do a probable cause, paper review of the EE paperwork
- Please type or write legibly
- Applicants can be called to court to testify
 - Since the hearing may be a few weeks after your exam, thorough documentation will help you remember as well
- The EE documentation identifies potential witnesses and provides foundation for the case

DOCUMENTATION TIPS

- Be specific and descriptive:
 - “I observed”
 - “As evidenced by...”
- Avoid vague terminology
- Document your exam/observation vs. simply saying you agree with QMHP
- Use quotes; Name sources
- Cite interview location
- Specify criteria for involuntary admission
- Discuss alternatives considered, why rejected
- Proofread, sign and date



CONTACTS

- If you have questions:
- Call
 - AAG'S MENTAL HEALTH LEGAL DIVISION:
 - Phone: (802) 828-2163
 - VPCH Admissions Office: They coordinate EEs across the state, not just that hospital. Staffed 24/7.
 - Phone: (802) 828-2799
 - Fax: (802) 828-2749

Next Steps

- Take the 5 Question quiz to confirm you have learned the material. Go to <http://mentalhealth.vermont.gov/providers>
- Complete the Application Form to be designated a physician who can do Emergency Exams or go to: <http://mentalhealth.vermont.gov/providers>
- Mail to:
Jennifer Rowell
Department of Mental Health
26 Terrace Street
Montpelier, VT 05609
- Fax to: (802) 828-1717