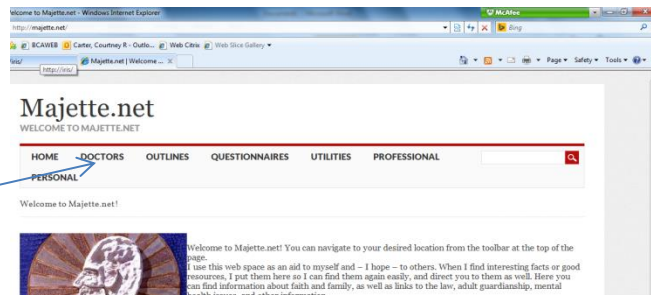


Involuntary Medication or ECT Petition and Order Instructions

April 7, 2015

The Petition and Order for Consent to Psychiatric Medication or ECT are located at www.t-mlaw.com.



1. Click on Doctors:

Doctors

2. Click on Psychiatric Rx and ECT:

- 2015 Civil Commitment Hearing Schedule and Special Justice Dawson and Majette Contact Information
- Medical Consent Resources
 - Doctors: Emergency Medical Consent
 - Non-Emergency Consent
 - Psychiatric Rx and ECT
 - All Other

3. Click on and complete the petition.

4. Click on and complete the Exhibit.

5. Click on and complete the order.

6. Give a copy to the patient and place the originals in the chart. Notify the Special Justice that these papers are to be addressed.



The applicable statutes are listed below (current as of this date):

Non-Judicial Surrogates (Implied “Family Member” and Express “Living Will” Agents)

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§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions.

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; or
2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or
3. An adult child of the patient; or
4. A parent of the patient; or
5. An adult brother or sister of the patient; or
6. Any other relative of the patient in the descending order of blood relationship; or
7. Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

If two or more of the persons listed in the same class in subdivisions A 3 through A 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

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B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

§ 54.1-2986.1. Duties and authority of agent or person identified in § 54.1-2986.

A. If the declarant appoints an agent in an advance directive, that agent shall have (i) the authority to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and (ii) decision-making priority over any person identified in § 54.1-2986. In no case shall the agent refuse or fail to honor the declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation. Decisions to restrict visitation of the patient may be made by an agent only if the declarant has expressly included provisions for visitation in his advance directive; such visitation decisions shall be subject to physician orders and policies of the institution to which the declarant is admitted. No person authorized to make decisions for a patient under § 54.1-2986 shall have authority to restrict visitation of the patient.

B. Any agent or person authorized to make health care decisions pursuant to this article shall (i) undertake a good faith effort to ascertain the risks and benefits of, and alternatives to any proposed health care, (ii) make a good faith effort to ascertain the religious values, basic values, and previously expressed preferences of the patient, and (iii) to the extent possible, base his decisions on the beliefs, values, and preferences of the patient, or if they are unknown, on the patient's best interests.

§ 54.1-2986.2. Health care decisions in the event of patient protest.

A. Except as provided in subsection B or C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision if:

1. The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and the patient's attending physician or licensed clinical psychologist attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;

2. The decision does not involve withholding or withdrawing life-prolonging procedures; and

3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

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C. In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent or person authorized to make decisions pursuant to § 54.1-2986 may make a decision over the protest of a patient who is incapable of making an informed decision if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;
2. The decision does not involve (i) admission to a facility as defined in § 37.2-100 or (ii) treatment or care that is subject to regulations adopted pursuant to § 37.2-400;
3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient in an advance directive or otherwise regarding such health care or, if they are unknown, is in the patient's best interests;
4. The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law; and
5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's patient care consulting committee, if one exists, or otherwise by two physicians not currently involved in the patient's care or in the determination of the patient's capacity to make health care decisions.

D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of § 54.1-2985.

E. If a patient protests the authority of a named agent or any person authorized to make health care decisions by § 54.1-2986, except for the patient's guardian, the protested individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later protest. If the protested individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § 54.1-2986 or in accordance with any other provision of law.

§ 37.2-805.1. Admission of incapacitated persons pursuant to advance directives or by guardians.

A. An agent for a person who has been determined to be incapable of making an informed decision may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific

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authorization for his agent to make health care decisions even in the event of his protest as provided in § 54.1-2986.2. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

....

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

Guardians (Judicially Appointed)

§ 37.2-805.1. (B). Admission of incapacitated persons pursuant to advance directives or by guardians.

B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 may consent to admission of that person to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § 64.2-2009. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

(2009, cc. 211, 268.)

§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the

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factors specified in § 64.2-2007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.

B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs. The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes that are specified in the order.

C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition.

D. A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

(1997, c. 921, § 37.1-134.14; 1998, c. 582; 2005, c. 716, § 37.2-1009; 2009, cc. 211, 268; 2010, cc. 455, 632; 2012, c. 614.)

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