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Unless otherwise specifically stated, all references are as of 2-19-23.

Civil Mental Health Law: A Practical Guide to Virginia Civil Commitment

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A. Hearing Key Concepts.[1]

1. Procedural.

   a. Pettion, Petitioner Notice, Counsel for Respondent, and No Inference of Petitioner's Non-Appearance.[2]

      (i.) Proceedings are commenced with the filing of a petition.[3]

      (ii.) Petitioner must be given adequate notice of the place, date, and time of the commitment hearing.

      (iii.) The petitioner may retain counsel at his own expense and may be present during the hearing, and to testify and present evidence.

      (iv.) The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

   b. Community Services Board (CSB).

      (i.) The Court requires the applicable Community Services Board (CSB) to prepare and file a preadmission screening report for the Court.[4]

      (ii.) The applicable CSB is the board serving the county or city where the patient resides or, if impractical, where the patient is located.[5]

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[1] This is a technical treatment of mental health statutes in the writer's state, the Commonwealth of Virginia. For a general overview of the limits and underpinning of the curtailment of liberty by forced treatment process in the United States, please see, *Involuntary Civil Commitment and the Inescapable Wetness of Light*. For an overview of state laws in other jurisdictions, see Treatment Advocacy Center state specific statutes here.

[2] Va. Code § 37.2-814 (F).

[3] Va. Code § 37.2-808 *et seq.* DBHDS Form DC-400110/22 at this link.

[4] Va. Code § 37.2-816. DBHDS preadmission screening report form (2009), at this link.

[5] *Id.*

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(iii.) Advance notice of hearing to Community Services Board: minimum 12 hours.[6]

(iv.) Presence of Community Services Board (personal or electronically).[7]

c. Independent Examination and Report.[8]

(i.) Independent examiner duties and certification requirements.[9]

d. Engaged or appointed counsel for patient.[10]

(i.) Counsel's duties.[11]

(ii.) Written description of procedure prior to hearing.[12]

e. Hearing time limits: *72hours±*.[13]

(i.) Hearing for initial treatment.

(a.) The hearing is required after enough time has passed to allow for the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but

(b.) must be within 72 hours of the *execution* of a temporary detention order[14] unless the 72-hour period herein ends on a Saturday, Sunday, legal holiday, or

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[6] Va. Code § 37.2-817 B. If the representative of the community services board that prepared the preadmission screening report will be present by telephonic means, the court shall provide the telephone number to the community services board.

[7] *Id.*

[8] Va. Code § 37.2-815. DMHMRSAS Form 1002–IE created by the DBHDS, distributed by Virginia Supreme Court Executive Secretary. Forms, .pdf and print.

[9] Va. Code § 37.2-815

[10] The patient is entitled to counsel, and if none, then appointed counsel. Va. Code § 37.2-814 C. When the patient refuses counsel the writer recommends appointing counsel as an advisor to remain in the hearing and assist as requested. This should be made apparent on the recording required, Va. Code § 37.2-804.2.

[11] During or before the hearing, the attorney *shall* interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. Va. Code § 37.2-814 (D).

[12] Va. Code § 37.2-814 (D).

[13] Va. Code § 37.2-814 (A).

[14] Va. Code § 37.2-809.

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day on which the court is lawfully closed, in which case the person may be detained until the close of business on the next day that is not such a day.[15]

(ii.) Mandatory outpatient treatment (MOT) post discharge treatment.

(a.) A hearing for post discharge mandatory outpatient treatment (MOT) before release from **voluntary treatment** **in a state hospital** must be held within *72hours±* of a motion filed by the patient's treating physician, family member, personal representative,[16] or the community services board for the state hospital in which the patient volunteered, the patient resides, or where the patient receives treatment, to require the patient to adhere to MOT upon release if the patient at least twice within the 36 months before the date of the hearing has following a hearing voluntarily admitted or been involuntarily admitted to treatment. [17]

(b.) A hearing for post discharge mandatory outpatient treatment (MOT) before release from **involuntary treatment** **in any hospital** for a patient meeting the same criteria above[18] must be held within the same time frame of the motion filing time, *72hours±*.

f. Place of hearing, mode of participation.

(i.) Place of hearing.[19] The court may convene the hearing at the facility in which the patient is detained or any other place open to the public in the hospital, even though the facility or place is located in a county or city other than his own. A district court judge or special justice of the county or city in which the facility or place is located may conduct the hearing as well.

(ii.) Mode of participation. Hearings, remote or in person.

(a.) Hearings may be conducted electronically when the judge can see the patient and the patient can see the judge.[20]

(b.) When a witness cannot be physically present, testimony may be received using a telephonic communication system.[21]

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[15] For brevity, *72hours±*.

[16] Personal representative is used in several Chapter 8 statutes but not defined except with respect to medical records release for an advance medical directive holder, Va. Code § 37.2-804.2.

[17] Va. Code § 37.2-805.

[18] Va. Code § 37.2-817.01 (C, D).

[19] Va. Code § 37.2-820.

[20] Va. Code § 37.2-801.1 (B).

[21] *Id.*

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g. Pretrial release during TDO detention.

(i.) By detention facility.[22] The director of any facility in which the person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not meet the commitment criteria specified in subsection C of § 37.2-817[23] if released.

(ii.) By court. The Court may release the person on bond on the same grounds.[24]

h. Orders and judgments.

(i.) Service and transmission of petitions and order for initial custody and detention may be made by electronic means.[25]

(ii.) Orders in a proceeding.

(a.) Continuance.

(b.) Dismissal.

(c.) Voluntary status, "VIT."[26]

(iii.) Involuntary treatment.

(a.) Involuntary civil commitment is the last resort. It is ordered only after determining that the patient meets the test for involuntary treatment, but is not willing to volunteer, or capable thereof, and that out-patient treatment is not appropriate.[27]

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[22] Va. Code § 37.2-809 (H) referring to criteria in Va. Code § 37.2-813.

[23] Va. Code § 37.2-817 (C) in pertinent part provides that a person meets the criteria for involuntary treatment if the person " will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs."

[24] Va. Code § 37.2-813.

[25] Va. Code § 37.2-801.1 (A).

[26] Va. Code § 37.2-814. "Volunteer" is not so simple. When used in Chapter 8 in this chapter, it is a term of art. A "volunteer" cannot simply leave after the hearing: "[t]he judge or special justice *shall* require the volunteer to accept voluntary admission for ***a minimum period of treatment not to exceed*** 72 hours. ***After*** such minimum period of treatment, [***then***] the person shall give the facility 48 hours' notice prior to leaving the facility." Unless the court specifically limits the minimum treatment time the patient is not free to leave (against the wishes of the treating physician) for 120 hours – the initial 72 hours The DBHDS petition for voluntary status, DBHDS 1001B, is at this link. In this work, a patient's acceptance of "voluntary status" after a Ch. 8 hearing is considered voluntary in-hospital treatment, or VIT.

[27] Va. Code § 37.2-817.01 (A).

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(b.) The continuum of involuntary mental health treatment is mandatory in-hospital care (MIT) and mandatory out of hospital care (MOT).[28]

Under long considered public policy, in 2022 Virginia involuntary mental health treatment is seen as a continuum.

In order of priority when judicial treatment is required (see test below), first preferred is MOT, then MIT, and then MIT followed by MOT to maintain the patient in the community.

(c.) Place of treatment (MIT).[29] The CSB providing the preadmission screening report designates the treatment facility. If the CSB does not designate a facility at the commitment hearing, the Commissioner of Mental Health facility designates the facility.

(d.) Time limits.

VIT is limited to 72 hours *plus* 48 hour notice to facility.[30]

MIT is initially limited to 30 days. Petitions to extend a term of MIT may be filed at any time prior to the expiration of a term of MIT. Subsequent orders may extend MIT up to 180 days.[31]

MOT commences upon discharge and may be for up to 180 days, and is dependent upon the patient's circumstances in the community.[32]

(e.) MOT details.

- MOT may be ordered *in the initial hearing* if the patient otherwise meets the criteria for involuntary treatment, but the Court finds from a report developed by the CSB screening the patient and other evidence that MOT is appropriate.[33]
- MOT cannot be ordered *in addition to* MIT in the initial hearing or any motion to require MOT post discharge unless there is a history of VIT, MIT or MOT being ordered within the thirty six months preceding the

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[28] Va. Code § 37.2-817.01 (A).

[29] Va. Code § 37.2-817 (C).

[30] Va. Code § 37.2-814 (D).

[31] Va. Code § 37.2-817 (C).

[32] Va. Code § 37.2-817.01 (C)

[33] Va. Code § 37.2-817.01 (B). The Court must find the plan offers an improvement of the patient's condition, that he can adhere to the mandatory outpatient treatment plan, and the ordered treatment will be delivered on an outpatient basis by the community services board or other designated provider. However. the plan is not a "[l]ess restrictive alternative[] … unless the services are actually available in the community.

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date of the hearing in which MOT is sought. There are some extensions relating to incarcerated persons in the 36 month period. In this work, this precursor time is referred to as "*C*ountable *P*revious *T*reatment," CPT.[34]

- If CPT is proven in the initial hearing, the Court in the initial hearing can require MOT following discharge form MIT.[35]

2. Incidents of Trial: What Must be Proven, by What Standard, and What are Collateral Consequences?

   a. Clear and convincing standard of proof.[36]

   b. Test for involuntary treatment.[37]

      (i.) "substantial likelihood" that because of

      (ii.) Mental illness the respondent will

      (iii.) In the near future either

         (a.) **Cause serious *physical* harm**

            to himself or

            others

         (b.) as evidenced by relevant information, which may include recent behavior causing, attempting, or threatening harm; or

      (iv.) **Suffer serious harm** [himself] due:

         (a.) to his lack of capacity to protect himself from harm, or

         (b.) to provide for his basic human needs.

   c. Collateral consequences.

      (i.) Firearms restrictions for involuntary and voluntary patients.[38]

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[34] Va. Code § 37.2-817.01 (C).

[35] *Id.* If CPT is proven in the judge or special justice may order that, upon discharge from inpatient treatment, the person adhere to a comprehensive mandatory outpatient treatment plan.

[36] Va. Code § 37.2-817 (C); Va. Code § 37.2-817.01 (B, C).

[37] Va. Code § 37.2-817 (C); Va. Code § 37.2-817.01 (B, C). See *Understanding and Applying Virginia's New Statutory Civil Commitment Criteria*, Cohen, Bonnie, and Monahan (2008).

[38] "It shall be unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2; (ii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, notwithstanding the outcome of any appeal taken pursuant to § 37.2-821; (iii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, notwithstanding the outcome of any appeal taken pursuant to § 16.1-345.6; (iv) who was the subject of a temporary detention order pursuant to § 37.2-809 and

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(ii.) The admission of any person to a facility shall not, of itself, create a presumption of legal incapacity.[39]

B. Representing The Petitioner In A Civil Commitment Proceeding.

1. Initial petition[40] filed by a responsible person[41] with the magistrate.[42]
2. Request for Community Services Board in–person evaluation.[43]
3. The prescreening form[44] is a useful checklist / client advocacy tool for counsel to the petitioner.
    a. ¶ 5 contains "buzz words" for presentation to the pre–screener.
    b. ¶ 6 contains reference to the DSM IV listing of mental illness.[45]

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subsequently agreed to voluntary admission pursuant to § 37.2-805; (v) who, as a minor 14 years of age or older, was the subject of a temporary detention order pursuant to § 16.1-340.1 and subsequently agreed to voluntary admission pursuant to § 16.1-338; or (vi) who was found incompetent to stand trial and likely to remain so for the foreseeable future and whose case was disposed of in accordance with § 19.2-169.3, to purchase, possess, or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor." Va. Code § 18.2–308.1:3. incorporated in the advice of rights the Court certifies it has provided at the commencement of the hearing, see Form DC 4002 (Order); (https://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc4000sadultmentalhealth.pdf).

[39] Va. Code § 37.2-825. See also Va. Code § 64.2-2000 *et seq.* and provisions relating to guardian's powers pursuant to Va. Code § 64.2-2009 and Va. Code § 37.2-805.1 (B). Analysis, see *Virginia Guardianship and Conservatorship: 2016* (writer's outline).

[40] Form DC-4001 (Petition); (https://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc4000sadultmentalhealth.pdf).

[41] A responsible person includes "a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, or a law-enforcement officer." Va. Code § 37.2-800. Va. Code § 37.2-100 defines a family member as "an immediate family member of a consumer or the principal caregiver of a consumer. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the consumer." Compare, personal representative ambiguity, *supra*.

[42] The "magistrate shall issue [a temporary detention order], upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or [electronically] … by an employee or a designee of the local community services board ..." Va. Code § 37.2-809 B.

[43] *Id.*

[44] See Uniform Preadmission Screening Form (2009).

[45] The "Diagnostic and Statistical Manual of Mental Disorders, 5th Edition,"(DSM-V) published by the American Psychiatric Association. Counsel for Petitioner will do well to understand the mental health professional's praxis language when describing specific behavior when the objective is certification of the case to the magistrate for issuance of a temporary detention order, Va. Code § 37.2-809 (B).

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c. ¶ 7 contains sequential risk determination analysis for the pre–screener.

C. Four Cases Often Seen.

1. The schizophrenic.

a. Petitioner is often the parent / spouse / assisted living facility staff.

b. Schizophrenia[46]

(i.) A thought disorder.

(ii.) Symptoms of Schizophrenia typically begin between adolescence and early adulthood for males and a few years later for females, and usually as a result of a stressful period (such as beginning college or starting a first full time job). Initial symptoms may include delusions and hallucinations, disorganized behavior and/or speech. As the disorder progresses symptoms such as flattening or inappropriate affect may develop. Paranoid, catatonic, and undifferentiated types are identified in the DSM.

(iii.) Dangerousness to others (from paranoia) or to themselves (to stop the voices) or unable to care for themselves ("self harm"), in the most extreme form (catatonia).

(iv.) Well treated with medicines which must often be administered involuntarily.

c. A Typical presentation.

5. MENTAL STATUS EXAM (***Check*** all that apply and add specific behaviors under findings)

Appearance: ☐WNL ☑unkempt ☐poor hygiene ☑bizarre ☐tense ☐rigid

Behavior/Motor Disturbance: ☐WNL ☐agitation ☑ guarded ☐tremor ☐manic ☐impulse control ☑ psychomotor retardation

Orientation: WNL **disoriented:** ☑ time ☑ place ☑ person ☐situation

Speech: ☐WNL ☑ pressured ☐slowed ☐soft/loud ☐impoverished ☐slurred ☐other

Mood: ☐WNL ☐depressed ☑ angry/hostile ☐euphoric ☐anxious ☐anhedonic[47] ☐withdrawn

Range of Affect: ☐WNL ☐constricted ☐flat ☑ labile[48] ☐inappropriate

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[46] DSM-V.

[47] Sad. Literally, "without hedonism;" joyless; *ex*., the last man in line at our Sunday morning coffee fellowship, bereft of crumb cake, ruefully sighing as he forks apple slices and carrot sticks, the last morsels on the table.

[48] "[R]eadily or continually undergoing chemical, physical, or biological change or breakdown, **UNSTABLE** <a *labile* mineral> 2 **:** readily open to change" http://www.merriam-webster.com/dictionary/labile.

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Thought Content: ☐WNL ☑ delusions ☐grandiose ☑ ideas of reference[49] ☑ paranoid ☐obsessions ☐phobias

Thought Process: ☐WNL ☐loose associations ☐flight of ideas ☐circumstantial ☐blocking ☐tangential ☑ perseverative[50]

Perception/ Sensorium: ☐WNL **hallucinations:** ☑ auditory☐ visual ☐olfactory ☐tactile☐ illusions

Memory: ☑ WNL **impaired:** ☐recent ☐remote ☐immediate

Able to provide historical information: Y N If no, explain below in findings.

Appetite: ☑ WNL☐ poor **Weight:** ☐loss ☐gain **Appetite:** ☐increased ☐decreased

Sleep: ☐WNL ☐hypersomnia ☑ onset problem ☑maintenance problem | **Insight:** ☐WNL ☐blaming ☐little☑ none

Judgment: ☐Good ☐impaired ☑ poor

Estimated Intellectual Functioning: ☑ above average ☐average ☐below average ☐diagnosed MR

Reliability of self report (explain below): ☐good ☐fair ☑ poor

Narrative:

Mr. Samuels lives in an assisted living facility. He stopped taking his medicines again.[51] He is hearing voices telling him to kill his roommate, and these are confirmed by the radio. He is afraid to sleep because of the voices; he has not slept in three days. He refuses hospital admission because of the paranoia; he claims his roommate owns the hospital and will have him killed there. He was discharged from ABC Hospital 2 weeks ago.

d. Involuntary judicial consent / forced medication orders.[52]

2. The bi polar.

a. A mood disorder.

(i.) For a diagnosis of Bipolar I disorder, a person must have at least one manic episode. Mania is sometimes referred to as the other extreme to depression. Mania

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[49] The radio is talking *to me* and *not you.*

[50] The tendency to perseveration, the "continuation of something (as repetition of a word) usually to an exceptional degree or beyond a desired point," Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/perseveration, as in, "Are we there yet?" from the children in the Greyhound seat behind yours. On the way to Texas. In a local.

[51] See ¶ 10, Pre-admission screening ("Has individual followed recommended medication and recovery plan? ☐Y ☐N ☐NA").

[52] Va. Code § 37.2-1101 as limited by –1102 (3).

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is an intense high where the person feels euphoric, almost indestructible in areas such as personal finances, business dealings, or relationships. They may have an elevated self-esteem, be more talkative than usual, have flight of ideas, a reduced need for sleep, and be easily distracted. The high, although it may sound appealing, will often lead to severe difficulties in these areas, such as spending much more money than intended, making extremely rash business and personal decisions, involvement in dangerous sexual behavior, and/or the use of drugs or alcohol. Depression is often experienced as the high quickly fades and as the consequences of their activities becomes apparent, the depressive episode can be exacerbated.[53]

b. A typical presentation.

5. MENTAL STATUS EXAM (***Check*** all that apply and add specific behaviors under findings)

Appearance: ☐WNL ☐unkempt ☐poor hygiene ☑ bizarre ☐tense ☐rigid ***Mr. Billings has shaved his head and coated it in black paint.***

Behavior/Motor Disturbance: ☐WNL ☑ agitation ☐guarded ☐tremor ☑manic ☐impulse control ☐psychomotor retardation

Orientation: ☑WNL **disoriented:** ☐time ☐place ☐person ☐situation

Speech: ☐WNL ☑ pressured ☐slowed ☑soft/loud ☐impoverished ☐slurred ☐other

Mood: ☐WNL ☐depressed ☑ angry/hostile ☑ euphoric ☐anxious ☐anhedonic ☐withdrawn

Range of Affect: ☐WNL ☐constricted ☐flat ☑labile ☐inappropriate ***Mr. Billings is alternately loud and louder, more and more expansive and hyper garrulous.***

Thought Content: ☐WNL ☑delusions ☑grandiose ☐ideas of reference ☐paranoid ☐obsessions ☐phobias

Thought Process: ☐WNL ☑ loose associations ☑ flight of ideas ☐circumstantial ☐blocking ☐tangential ☑ perseverative ***Mr. Billings owns this hospital, Richmond Behavioral Health Authority, and several million dollars in stocks. He is fixated on Altria and insists that he should not have been evicted from the Company's headquarters this morning.***

Perception/ Sensorium: ☐WNL **hallucinations:** ☑ auditory☐ visual ☐olfactory ☐tactile☐ illusions

Memory: ☑ WNL **impaired:** ☐recent ☐remote ☐immediate

Able to provide historical information: Y N If no, explain below in findings. ***Could not assess. He would not answer questions (starting with appetite) until I proved that I was not part of the Reynolds***

[53] This is Bi-Polar I type. See here for Bi-Polar II Type.

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conspiracy. When I asked about what the conspiracy was about, he said, "I knew you'd play dumb," and asserted his Constitutional rights about discrimination.

Appetite: ☐WNL☐ poor **Weight:** ☐loss ☐gain **Appetite:** ☐increased ☐decreased

Sleep: ☐WNL ☐hypersomnia ☐onset problem ☐maintenance problem | **Insight:** ☐WNL ☐blaming ☐little☐ none

Judgment: ☐Good ☐impaired ☑ poor

Estimated Intellectual Functioning: ☐above average ☑ average ☐below average ☐diagnosed MR

Reliability of self report (explain below): ☐good ☐fair ☑ poor

Narrative:

RPD[54] called at 0230 for f-2-f[55] to Philip-Morris site at biotechnology center, Leigh Street. Mr. Billings had altered his appearance by shaving his head and painting his scalp. He knew that there was a conspiracy to keep him from running his business (he claims he was Mr. Morris before he changed his name). He owns everything, etc. He refused to leave the premises to return to his group home. The assisted living facility administrator (John Doakes at 804-xxx-xxxx) reported Mr. Billings had been escalating all day and shouting at the television and other residents who smoked generic cigarettes "and killing my business." He stopped taking his medicine when he was discharged last week from St. Mary's hospital. History of two suicide attempts / one self mutilation (he set himself afire).

c. Involuntary judicial consent / forced medication orders.

3. The schizoaffective. [56]

a. Schizophrenia and bi–polar in one person.

b. An uninterrupted period of illness during which there is a major mood episode (major depressive or manic) concurrent with Criterion A of schizophrenia. The major depressive episode must include Criterion A1 : Depressed mood. B. Delusions or hallucinations for 2 or more weeks in the absence of a major mood episode depressive or manic) during the lifetime duration of the illness. C. Symptoms that meet criteria for a major mood episode are present for the majority of the total duration of the active and residual portions of the illness. D. The disturbance is not attributable to the

[54] Richmond Police Department.

[55] Face-to-face ("in-person") assessment, see Va. Code § 37.2-809 (B).

[56] DSM-V.

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effects of a substance (e.g., a drug of abuse, a medication) or another medical condition.

c. Well controlled by various medicines at address both the delusional and mood components.

d. A typical presentation is a combination of the schizophrenic and bi-polar cases.

4. The alcoholic / drug addict[57]

a. Serious self harm from physical abuse of the patient's body.

b. Serious risk to others (chronic d.u.i.)

c. Terrible risk of death in alcohol withdrawal.[58]

5. The organic patient.

a. Petitioner is often the child / spouse / nursing home / assisted living facility staff caring for the patient.

b. Neurocognitive disorders classification.[59]

(i.) A thought disorder and includes traumatic brain injury.[60]

(ii.) Symptoms of these disorders often include the root dementia symptoms such as memory loss; trouble naming common items; personality changes; trouble with tasks such as washing dishes or setting the table; wrong dressing for the weather or occasion; careless of hygiene; more argumentative; delusional; wander, often at

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[57] "For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse." Va. Code § 37.2-800.

[58] While only between 3- 5% of patients in alcohol withdrawal progress to delirium tremens, the risk of death in *untreated* cases has been estimated at up to 35%. National Institutes of Health, Library of Medicine.

[59] "The neurocognitive disorders (NCDs) (referred to in DSM-IV as "Dementia, Delirium, Amnestic, and Other Cognitive Disorders") begin with delirium, followed by the syndromes of major NCD, mild NCD, and their etiological subtypes. The major or mild NCD subtypes are NCD due to Alzheimer's disease; vascular NCD; NCD with Lewy bodies; NCD due to Parkinson's disease; frontotemporal NCD; NCD due to traumatic brain injury; NCD due to HIV infection; substance/medication-induced NCD; NCD due to Huntington's disease; NCD due to prion disease; NCD due to another medical condition; NCD due to multiple etiologies; and unspecified NCD. The NCD category encompasses the group of disorders in which the primary clinical deficit is in cognitive function, and that are acquired rather than developmental. Although cognitive deficits are present in many if not all mental disorders (e.g., schizophrenia, bipolar disorders), only disorders whose core features are cognitive are included in the NCD category. The NCDs are those in which impaired cognition has not been present since birth or very early life, and thus represents a decline from a previously attained level of functioning."

[60] TBI diagnosis requires that there be "evidence of a traumatic brain injury—that is, an impact to the head or other mechanisms of rapid movement or displacement of the brain within the skull, with one or more of the following: 1. Loss of consciousness. 2. Posttraumatic amnesia. 3. Disorientation and confusion. 4. Neurological signs (e.g., neuroimaging demonstrating injury; a new onset of seizures; a marked worsening of a preexisting seizure disorder; visual field cuts; anosmia; hemiparesis)." DSM-V.

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night; depression; difficulty in eating, speaking, family / friend recognition, excretory function, ambulation) punctuated by behavioral issues associated with resulting frustration and confusion.

(iii.) Dangerousness to others (from mistaken identity (*e.g.* sexual assault of "my wife" in "my home" while in a nursing home / assisted living facility, or of assault of third party for "talking with my wife;" in the home, by leaving the stove on) or to themselves (wandering at night, inviting strangers into the home under mistaken belief that they are family) or unable to care for themselves (*e.g.* APS neglect cases,).

(iv.) Not susceptible to remedial medicines but some medicines are available to halt the progress of the disorder.

c. A Typical presentation.

5. MENTAL STATUS EXAM (***Check*** all that apply and add specific behaviors under findings)

Appearance: ☐WNL ☑unkempt ☑ poor hygiene ☑bizarre ☐tense ☐rigid

Behavior/Motor Disturbance: ☐WNL ☑agitation ☐ guarded ☐tremor ☐manic ☐impulse control ☑ psychomotor retardation

Orientation: WNL **disoriented:** ☑ time ☑ place ☑ person ☑ situation

Speech: ☐WNL ☐ pressured ☐slowed ☑ soft/**loud** ☑ impoverished ☐slurred ☐other

Mood: ☐WNL ☐depressed ☑ angry/hostile ☐euphoric ☐anxious ☐anhedonic[61] ☐withdrawn

Range of Affect: ☐WNL ☐constricted ☐flat ☑ labile[62] ☐inappropriate

Thought Content: ☐WNL ☑ delusions ☐grandiose ☑ ideas of reference[63] ☑ paranoid ☐obsessions ☐phobias

Thought Process: ☐WNL ☐loose associations ☐flight of ideas ☐circumstantial ☐blocking ☐tangential ☑ perseverative ***Mrs. Dawson constantly asks me to open the door to let her husband into the room; her husband has been dead for 20 years.***

Perception/ Sensorium: ☑ WNL **hallucinations:** ☐auditory☐ visual ☐olfactory ☐tactile☐ illusions

Memory: ☑ WNL **impaired:** ☐recent ☐remote ☐immediate

Able to provide historical information: Y N If no, explain below in findings.

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[61] See footnote 47, *supra*.

[62] "[R]eadily or continually undergoing chemical, physical, or biological change or breakdown, **UNSTABLE** <a *labile* mineral> 2 **:** readily open to change" http://www.merriam-webster.com/dictionary/labile.

[63] The radio is talking *to me* and *not you.*

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Appetite: ☐WNL ☑poor **Weight:** ☑ loss ☐gain **Appetite:** ☐increased ☑decreased

Sleep: ☐WNL ☐hypersomnia ☑ onset problem ☑maintenance problem | **Insight:** ☐WNL ☐blaming ☐little☑ none

Judgment: ☐Good ☐impaired ☑ poor

Estimated Intellectual Functioning: ☑ above average ☐average ☐below average ☐diagnosed MR

Reliability of self report (explain below): ☐good ☐fair ☑ poor

Narrative*:*

Mrs. Dawson lives in a nursing home.[64] She was admitted there after her son (John, 70 himself) could no longer care for her in his home. She is hearing her deceased husband's voice asking her to come to the hall, and then out the door. She is restless and can't sleep. She has wandered outside three times. The facility staff's efforts at redirection have been fruitless and last night she struck one of the nurses, drawing blood. She was screaming, "Let my husband in this house now!" She was confused when I met with her and had soiled herself, but refused to let the staff change her diaper.

d. Involuntary judicial consent / forced medication order may not be helpful here.

D. Judicial Consent To Involuntary Treatment.

1. Generally.

   a. Va. Code § 37.2-1101 (A) provides Direct access to *ad hoc* judicial decision making through the District Court.

   b. Ex parte (telephone) consent permitted when the patient incapable of informed consent is in extremis (harm will occur in the next 24 hours) and there is no other decision maker available.[65]

   c. Courts cannot consent to these procedures except as specifically stated:[66]

      1. Nontherapeutic sterilization, abortion, or psychosurgery.

      2. Admission to a training center or a hospital. However, the court may issue an order under § 37.2-1101 authorizing treatment of a person whose admission to a training center or hospital has been or is simultaneously being authorized under §

[64] Note: if Mrs. Dawson is on Medicaid, she has already been found to require this level of care through the prescreening process required for Medicaid qualification. That process has established she is unable to care for herself or to be cared for in any congregate care facility less intensive than a nursing home. See Va. Medicaid Manual § M 1400, *Long Term Care*.

[65] Va. Code § 54.1-2986 lists the implied surrogates when there is no guardian or advance medical directive holder available. See also Virginia Medical Surrogate Consent (2014).

[66] Va. Code § 37.2-1102.

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37.2-805, 37.2-806, 37.2-807, or §§ 37.2-809 through 37.2-813, or of a person who is subject to an order of involuntary admission previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or of Chapter 9 (§ 37.2-900 et seq.).

3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. **Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary admission, including involuntary outpatient treatment, previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or Chapter 9 (§ 37.2-900 et seq.), or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2**.
4. Restraint or transportation of the person, unless the court finds upon clear and convincing evidence that restraint or transportation is necessary to the administration of an authorized treatment for a physical disorder or for a mental disorder if the person is subject to an order of involuntary admission issued previously or simultaneously under Chapter 11 (§ 19.2-167 et seq.) or 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, §§ 37.2-814 through 37.2-819, or Chapter 9 (§ 37.2-900 et seq.).

2. Forms.
   a. Emergency, Non-Emergency, and Special Circumstances (Medication, Electroconvulsive Therapy) Forms.[67]
   b. A useful exhibit for the lawyer's expert to consider is a grid with various medicines.[68]
   c. A useful iPhone app for the lawyer (but, judging from at least one review, not for the psychiatrist) is "Psych Drugs," by Michael Quach.[69]

E. Quick Links.

[67] District Court Form DC-489***A*** is a petition for ***NON-EMERGENCY*** consent. District Court Form DC-489 is a petition for ***EMERGENCY*** consent.

[68] National Institute of Mental Health, *Mental Health Medications*. List of psychiatric medications by condition treated (Wikipedia) is a useful lay guide.

[69]See http://itunes.apple.com/us/app/psych-drugs/id330545327?mt=8.

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Unless otherwise specifically stated, all references are as of 2-19-23.

1. DBHDS Staff Directory.
2. DBHDS Chapter 8 forms.

Fin.