

# Mental Health

## Introduction

All health care providers should have a basic understanding of the legal issues of mental health because, at some point, a health care provider will likely deal with a patient who is mentally ill. Knowing the legal rules and procedures will help assure that appropriate measures are taken to care for these vulnerable patients without violating their constitutional rights.

## Mental Illness Defined

Tennessee law defines “mental illness” as a psychiatric disorder, or alcohol or drug dependence, but does not include mental retardation or developmental disabilities. Specific statutes cover the different types of mental disabilities. This factsheet will focus on the statutes and legal issues relating to “mental illness.”

## Commitment

Historically, people who were considered mentally ill were often locked up in institutions. In 1975, the U.S. Supreme Court ruled that “mental illness” alone did not justify a State’s locking someone up

against his will and keeping him indefinitely in simple custodial confinement. Due process is required before anyone may be involuntarily committed, and failure to follow clearly defined statutory procedures may result in civil liability and criminal charges.

Basically, there are four procedures for detaining or admitting someone who is mentally ill in Tennessee:

- Voluntary admission,
- Detention of persons with severe impairments,
- Emergency involuntary admission to inpatient treatment, and
- Nonemergency involuntary admission to inpatient treatment.

**Note:** A complete explanation of each of the different procedures is beyond the scope of this factsheet. The following descriptions are simplified for clarity and provide only a broad overview.

*Voluntary admission.* The following people may apply for admission to a public or private facility for the

diagnosis, observation, and treatment of a mental illness or serious emotional disturbance:

- A person who is 16 years old or older who does not lack capacity;
- A parent, legal custodian, or legal guardian acting on behalf of a child;
- A conservator whom the appointing court has expressly granted authority to apply for such admission;
- A qualified mental health professional acting on the basis of the terms of a person’s declaration for mental health treatment;
- A person’s attorney-in-fact under a durable power of attorney for health care; or
- A caregiver acting under a power of attorney for the care of a minor child.

The admission and continued hospitalization must be approved by the admissions review committee. Once admitted, the person, or authorized representative, may request

discharge at any time in writing, and the facility either must release the person within a certain time frame or initiate involuntary commitment procedures.

*Detention of persons with severe impairments.* A person who is severely impaired may be detained up to 72 hours after two physicians have determined that the statutory requirements are met. "Severe impairment" means a condition in which an adult or emancipated child as a result of a mental illness or serious emotional disturbance:

- Is in danger of serious physical harm resulting from the person's failure to provide for the person's essential human needs of health or safety; or
- Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over the person's actions; and
- Is not receiving care that is essential for the person's health or safety.

If at any time within the 72 hours it is determined that the person is no longer severely impaired, the person must be released unless the person agrees to be admitted. If it is determined that the person needs treatment beyond the 72 hours, emergency involuntary commitment procedures must be initiated.

*Emergency Involuntary Commitment.* A person who poses an immediate substantial likelihood of serious harm because of mental illness or serious emotional disturbance may be involuntarily detained for roughly 20 days for emergency diagnosis, evaluation, and treatment. Tennessee statutes

set out a multi-step procedure that includes:

- obtaining two certificates of need for care by licensed physicians or other designated professionals,
- a court order to detain up to 5 days, excluding weekends and holidays, pending a probable cause hearing, and
- a court order to detain up to an additional 15 days based upon the court's findings at the probable cause hearing.

A person poses a substantial likelihood of serious harm IF AND ONLY IF:

- A person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR
- The person has threatened or attempted homicide or other violent behavior, OR
- The person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR
- The person is unable to avoid severe impairment or injury from specific risks, AND

There is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment.

The person must be released no later than 15 days after the court order entered at the probable cause hearing unless a petition for nonemergency commitment has been filed.

*Nonemergency Involuntary Commitment.* To initiate nonemergency commitment proceedings, someone must file a

sworn complaint for commitment with the court accompanied by either two certificates of need for care or a sworn statement that the person has refused to be examined by a certifying professional. If the person has refused to be examined, the court, after finding probable cause, will issue an order for law enforcement to take the person into custody for up to 48 hours for an examination by two certifying professionals.

The certificates of need for care must show that:

- The certifying professionals have personally examined the person within 3 days of the date of the certificate;
- That they are of the opinion that the person is subject to involuntary care and treatment under the commitment statute, and
- Their factual foundation for their conclusions on each item of the commitment statute.

The certifying professionals must be either two licensed physicians or one licensed physician and one qualified licensed psychologist.

The hearing must be held within 20 days. The court may continue the hearing for good cause for up to 10 days, or for as long as it takes to impanel a jury if the person demands a jury trial. If the court finds by clear, unequivocal, and convincing evidence that the person is subject to involuntary commitment pursuant to law, the court will order the person committed to an appropriate facility. If not, the court will dismiss the case and order the person released if the person is being detained.

Every person involuntarily admitted must be examined, no less than every six months, to determine if he or she is eligible for discharge. The person is eligible for discharge when he or she no longer meets the standards under which the person was admitted (i.e., no longer mentally ill or no longer poses a substantial likelihood of serious harm). When appropriate, the person may be discharged subject to mandatory outpatient treatment.

*Isolation and restraints.* Isolation and restraints may be used only in an emergency to assure the physical safety of the patient or of another or to prevent significant property damage. Continuous observation is required, and reevaluation of the person's condition must be done within one hour of the intervention. Complete documentation must be made in the person's chart.

Isolation and restraints may not be used as a means of coercion, discipline, convenience, or retaliation by staff. Restraints include physical and mechanical restraints and drugs used to control behavior or restrict freedom of movement. Isolation is placement of a person alone in a room from which he or she is not permitted to leave.

*Wrongful hospitalization.* It is a felony to cause the involuntary commitment of someone without probable cause to believe the person is in need of commitment. It is a felony to knowingly make a false certificate or application. It is a misdemeanor to knowingly provide false information for the purpose of involuntary commitment. Someone

who acts in good faith and without negligence is immune from civil or criminal liability.

**Consent to Treatment**

A person with capacity to make health related decisions has the right to consent to or refuse medical treatment. Under Tennessee law, a person who has been admitted to a mental health facility (a "service recipient") lacks capacity if the person is unable to make certain kinds of informed decisions due to a diagnosed mental illness or serious emotional disorder. Incapacity is shown by the fact that the person is unable to understand the proposed procedure, its risks and benefits, or the available alternative procedures.

The Treatment Review Committee (TRC) makes health related decisions for a service recipient who lacks capacity. The TRC is made up of at least four members, none of whom may be on the treating team. The TRC cannot override a decision by a parent, legal custodian, or legal guardian of an unemancipated child, or a conservator of a service recipient. An involuntarily committed person who has capacity to make informed decisions may not be given treatment over his or her objection, unless the person's TRC approves the treatment.

*Declaration for Mental Health Treatment (DMHT).* A DMHT is an advance directive that expresses a person's preferences and instructions about how he or she wants to be treated or not treated when he or she lacks capacity to make informed decisions about his or her mental health treatment. Any

competent person who is 16 years old or older or a competent emancipated minor may complete a DMHT. It is effective for two years from the date it is signed, unless it is revoked earlier.

A health care provider must comply with the instructions in a DMHT except in an emergency that endangers the person's life or health or, in the case of an involuntarily committed person, except when the person's TRC authorizes the treatment. A health care provider may refuse to comply with instructions in a DMHT as a matter of conscience, but the provider must notify the person, document the notification in the person's record, and arrange for a prompt transfer to another provider.

**Confidentiality**

Because of the stigma that has historically been associated with mental health treatment, the law in many states make confidences between a psychiatrist and a patient not just confidential, but privileged. Under Tennessee law, communications between a licensed physician when practicing as a psychiatrist in the course of or in connection with a therapeutic counseling relationship are privileged, and neither the psychiatrist nor any member of the staff may testify or be compelled to testify about such communications without the consent of the patient, unless an exception applies. Tennessee also recognizes a psychologist/patient privilege. There are several exceptions when the privilege does not apply.

*Exceptions to the testimonial privilege.* A psychiatrist can reveal

certain confidential communications without the consent of the patient in a legal proceeding under the following circumstances:

- In proceedings in which the patient raises the issue of the patient's mental or emotional condition.
- In proceedings where the court ordered the psychiatrist or psychologist to evaluate the patient and the patient is advised that communications will not be confidential.
- In proceedings to involuntarily hospitalize the patient, and the disclosures are limited to show the patient poses a substantial likelihood of serious harm.

*Duty to Warn Third Parties.* If the patient has made an actual threat to physically harm an identifiable victim or victims, and the mental health professional or service provider reasonably believes that the patient is capable of committing such act, the mental health professional or service provider may disclose patient communications to the extent necessary to warn or protect the potential victims. The mental health professional or service provider may discharge this duty by :

- Informing the clearly identified victim of the threat;
- Having the person admitted on a voluntary basis;
- Taking steps to seek admission of the person to a mental health facility on an involuntary basis; or
- Pursuing a course of action consistent with current professional standards that will discharge the duty.

*Required Reporting.* For any report required by law, such as for suspected cases of child or elder abuse, a mental health professional must make the report, even though it means disclosing a patient's confidential communications.

**Duty to Prevent Self Harm.**

A mental health professional has a duty to try to prevent self-abusive or self-destructive acts by a patient. The duty of care that a mental health professional or service provider owes a patient, particularly an institutionalized patient, includes taking reasonable steps to prevent a patient's suicide when it is a known or foreseeable risk. The intentional act of the patient in taking his or her life does not lessen the liability of the provider.

Under Tennessee law, a counselor, while acting within the scope of responsibilities assigned by a counseling center, is not liable civilly or criminally for the suicide or attempted suicide of any person consulting the counselor. "Counseling center" is defined as any nonprofit service operated at least partially with volunteer assistance that provides counseling, assistance, or guidance, either in person or by telephone, to persons with mental illness or serious emotional disturbance. The term "counselor" is broadly defined to include a wide range of people, from licensed professionals to nonprofessionals acting under the guidance or supervision of the professionals.

**Conclusion**

The legal issues of mental health add a layer of complexity not seen

in other areas of medical practice. While patient privacy and autonomy are important in all aspects of patient care, only the area of mental health puts at risk the most basic and fundamental of constitutional rights, a patient's liberty. Detaining someone against his will is a serious action. Due process requires a comprehensive set of procedural rules that mental health care professionals must follow to the letter, making patient care a balancing act between patient autonomy and the patient's well being.

**Helpful resources**

TN Dept. of Mental Health and Developmental Disabilities  
<http://www.tennessee.gov/mental/>

Tennessee Code, Title 33, Mental Health and Developmental Disabilities

O'Connor v. Donaldson, 422 U.S. 563 (1975).

**Disclaimer:** The information contained in this factsheet is educational in nature and provided as a public service. It is neither a comprehensive statement of the law nor intended as legal advice, and it should not be relied upon as such. The information is based upon federal and Tennessee law, and the law in other states may be different. Laws may change without notice, rendering the information contained in this factsheet inaccurate. If you have specific legal questions, please consult an attorney.

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