

DESIGNATED EXAMINER CERTIFICATION TRAINING

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Special Recognition

The Division of Substance Abuse and Mental Health wishes to recognize the following contributors for their tireless efforts to improve the quality and effectiveness of the Designated Examiner Certification Program:

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Designated Examiner Certification Training

1. Purpose/Philosophy

Why is There a Need for Civil Commitment?

- ▶ Citizens have individual civil liberties that need to be protected
- ▶ Process is a benevolent attempt to provide treatment to a vulnerable population. Treatment is not punishment
- ▶ The state may need to deprive someone of their civil liberties because they pose a danger to self or others due to mental illness
- ▶ This is done according to the “due process of law”

Least Restrictive Environment

- ▶ The Division of Substance Abuse and Mental Health (DSAMH) and the Local Mental Health Authority's (LMHA) shared philosophy is to treat the individual in the least restrictive environment possible
- ▶ Traditional levels of care may include the following:
 - Outpatient (including in-home services)
 - Intensive Outpatient/Day Treatment
 - Supported Housing/Respite/Foster Care/ Structured Foster Care
 - Residential
 - Acute Inpatient
 - State Hospital
- ▶ Mandate by law to use least restrictive environment

Least Restrictive Environment

- ▶ Individuals are usually committed when they pose a danger to themselves or others
- ▶ Commitment is to the Local Mental Health Authority (LMHA)
 - Adults are committed for treatment, not necessarily to a place or facility
 - Children are committed to the physical custody of the LMHA prior to being placed in a treatment facility
- ▶ Individuals may be transitioned from inpatient to “the least restrictive environment” available which provides safe, adequate and appropriate care

Powers of the State

- ▶ Civil commitment laws in the United States have been justified on the historical foundation of two fundamental powers and responsibilities of government
- ▶ First, governments are responsible for protecting each citizen from injury by another. This power of protection is commonly called police powers
- ▶ The second power, known as *parens patriae* (parent of the nation) is based on the government's responsibility to care for a disabled citizen as a loyal parent would care for a child
- ▶ A person with a significant mental illness may be civilly committed, or involuntarily hospitalized, under either of these powers. It is understood that the purpose of civil commitment is for the protection and safety of the public and/or the person with the mental illness

The Mitigation of Power

Probable Cause

This term comes from the Fourth Amendment of the United States Constitution: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon **probable cause**, ...

Civil Liberty

Due Process

Due process of law or the process that is due, is the principle that the government must respect all of the legal rights that are owed to a person according to the law. Due process holds the government subservient to the law of the land, protecting individual persons from the state.

Probable Cause

- ▶ Neither the Fourth Amendment nor the federal statutory provisions relevant to the area define "probable cause," the definition is entirely a judicial construct. Probable cause is determined according to:

“The factual and practical considerations of everyday life on which reasonable and prudent men act.”

- ▶ With respect to Utah civil commitment statutes (62A-15-629), probable cause is the standard under which a peace officer may invoke custody and transportation of a person based on belief formed through observation that the individual is mentally ill and a danger to himself or others.

Due Process of Law

- ▶ The Due Process Clause of the Fourteenth Amendment to the United States Constitution, prohibits states from unfairly or arbitrarily depriving individuals of life, liberty, or property
- ▶ Due process limits the powers of government in order to protect the rights of individuals
- ▶ Procedural due process limits the exercise of power by state and federal governments, by requiring that they follow certain procedures in criminal and civil matters, such as proper notice, and the opportunity for a fair and impartial hearing
- ▶ In cases where an individual has claimed a violation of due process rights, the courts must determine whether the individual has been deprived of "life, liberty, or property," and what procedural protections are "due" that individual
- ▶ What process is due, depends upon the facts and circumstances of a particular case

Designated Examiner Certification Training

2. Commitment Process Overview

Commitment Process Overview

- ▶ Two separate and distinct processes for civil commitment exist in statute and rule, one for adults and one for children
- ▶ Separate criteria, paperwork and procedures exist for the commitment process for adults, and for the commitment of children
- ▶ Distinct and specific roles for Designated Examiners in both the adult and child commitment processes



Involuntary Commitment Criteria

ADULTS

The individual has a **mental illness**

Because of the individual's mental illness, he/she poses a **substantial danger** of physical injury to self or others

The individual **lacks** the ability to engage in a **rational decision-making process** regarding the acceptance or rejection of treatment

There is no appropriate **less-restrictive** alternative

The local mental health authority can **provide** the individual with **treatment that is adequate and appropriate**

CHILDREN

The child has a **mental illness**

The child demonstrates a **risk of harm** to himself or others

The child is experiencing **significant impairment** in his ability **to perform socially**

There is no appropriate **less-restrictive** alternative

The child will **benefit from care and treatment** by the local mental health authority

Designated Examiner Certification Training

3. Statute/Definitions

Definitions UCA 62A-15-602

- ▶ “***Designated examiner***” means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness,
- ▶ ***or another*** licensed mental health professional designated by the division as specially qualified by training and at least five years’ continual experience in the treatment of mental or related illness

Utah Administrative Rule R523-1-14

- ▶ The Division of Substance Abuse and Mental Health (DSAMH) shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness.
- ▶ Upon receipt of a written application, the Director of DSAMH will cause to occur, a review and examination of the applicants qualifications.



Minimum Standards for Certification

The applicant must possess the minimum qualifications:

1. Be a licensed physician or other licensed mental health professional as defined by UCA 58-60-103(1)(b), Mental Health Professional Practice Act
2. Be a resident of the State of Utah
3. Other licensed mental health professionals must have 5 years continual experience, post licensure, in the treatment of mental (or related) illness
4. Demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior

Minimum Standards for Certification

The applicant will be tested on this criteria:

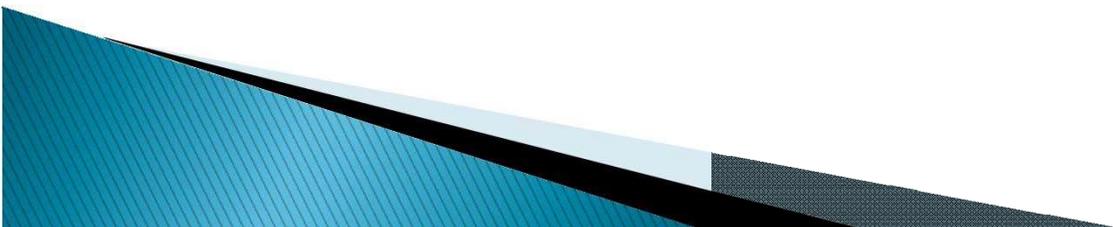
1. Demonstrate a fundamental working knowledge of mental health law, and in particular, involuntary commitment
2. Be able to discriminate between behavior that meets the criteria for civil commitment from behavior that does not
3. Demonstrate a general knowledge of the court process and the conduct of civil commitment hearings

Designated Examiner For Children (Neutral & Detached Fact Finder)

- ▶ In the commitment of a child, the Designated Examiner may also be known as a Neutral & Detached Fact Finder (NDFF) and when acting as such, should not be involved in the child's treatment. 62A-15-703 (2) & 62A-15-703 (3)(a)

Definitions

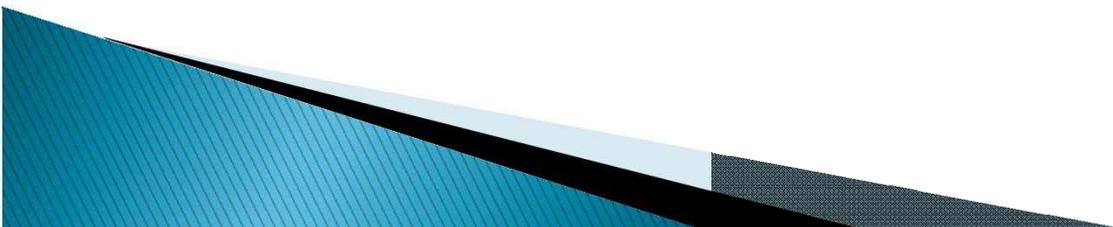
- ▶ **Local Mental Health Authority:**
A county legislative body – generally the county commission or group of commissions presiding over the counties that serve a public mental health catchment area
- ▶ **Commitment is to the Local Mental Health Authority**



Definitions

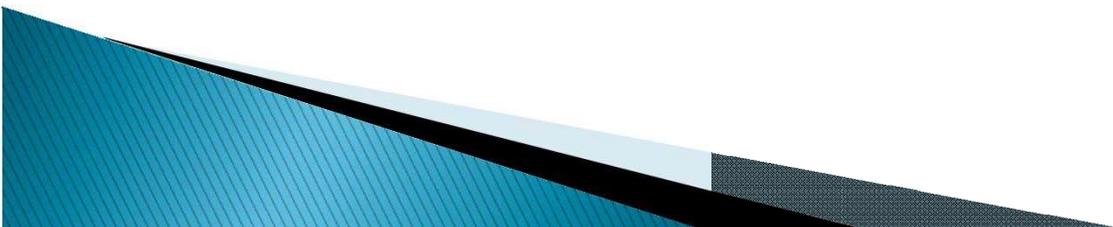
▶ **Mental Health Officer:**

- An individual who is designated by a Local Mental Health Authority as qualified by training and experience in the recognition and identification of mental illness
- A Mental Health Officer may sign an Emergency Application for Involuntary Commitment Without Certification (The Pink Sheet)



Definitions

- ▶ **Clinical Director or Designee:**
 - The Clinical Director of the Local Mental Health Authority or a “clinical employee” designated by the Clinical Director



Substantial Danger

- ▶ “***Substantial danger***” means that due to mental illness, and individual is at serious risk of:
 - a. suicide;
 - b. serious bodily self-injury;
 - c. serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, and shelter;
 - d. Causing or attempting to cause serious bodily injury to another individual; or
 - e. Engaging in harmful sexual conduct.

Substantial Danger - Harmful Sexual Conduct

- ▶ “Harmful sexual conduct” means any of the following conduct upon an individual without the individual’s consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in subsections 76-5-406(1) through (12):
 - ▶ (a) sexual intercourse;
 - ▶ (b) penetration, however slight of the genital or anal opening of the individual;
 - ▶ (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
 - ▶ (d) any sexual act causing substantial emotional injury or bodily pain

Substantial Danger - Timeliness

- ▶ The court shall consider all relevant historical and material information which is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence, 62A-15-631(9)(e) however
- ▶ When determining if the element of “Substantial Danger” exists, the Designated Examiner (DE) also considers the level of danger, based on behaviors, and/or threats, that have occurred in the relative recent past

Reporting Violence/Sexual Abuse Requirements

- ▶ A Designated Examiner is subject to all violence/sexual abuse reporting responsibilities

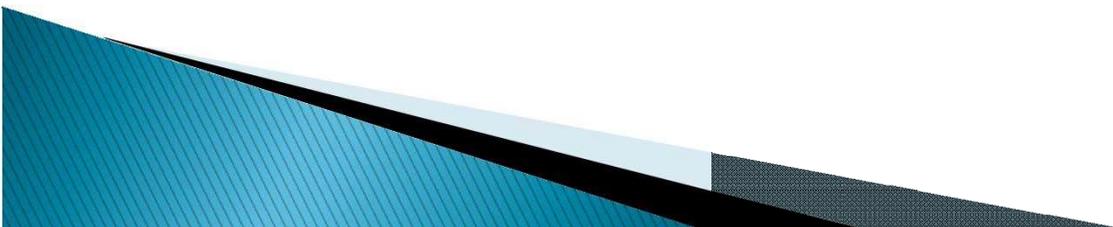


Designated Examiner Certification Training

4. Adult Procedure/Paperwork

How to Proceed

- ▶ You receive an inquiry regarding commitment or a crisis contact
- ▶ You gather information and determine the person has a mental illness that is impairing his or her functioning and poses a substantial danger to themselves or others
- ▶ What do you do?
- ▶ What are your options?



Procedures for Voluntary Admission

- ▶ Health Care is Rendered on the Basis of Informed Consent
- ▶ 18 year old or older, gives informed consent after explanation of recommendations by a mental health professional
- ▶ Patient agrees to abide by the rules and regulations of the treating facility
- ▶ Retains right to request their release at any time
- ▶ Release may be denied by the facility for up to 48 hours while staff files Application for Commitment (white sheet)

Application for Voluntary Admission To Local Mental Health Authority Form 35-1

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Discussion

Request for Release From (*Voluntary*) Admission to Local Mental Health Authority Form 31-1

- ▶ Patient requests to be released as a voluntary patient of the Local Mental Health Authority (LMHA)
- ▶ Release may be postponed up to 48 hours by completing Form 31-2, Notice of Denial of Request for Release from Local Mental Health Authority

Request for Release From (*Voluntary*) Admission to Local Mental Health Authority Form 31-1

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Discussion

REQUEST FOR RELEASE FROM ADMISSION TO

Local Mental Health Authority

Patient Name: _____

TO THE DIRECTOR:

I, _____, on this ____ day of _____, 20____,

do hereby request the release of _____, a
voluntary patient of the Local Mental Health Authority.

Signature of Patient, Legal Guardian, Parent, Spouse, or
Next of Kin*

Received by _____, this ____ day of _____, 20____,
Local Mental Health Authority Representative

at the hour of _____ a.m./p.m.

Signature of Staff Member

Received by _____, this _____, day of _____, 20____,

at the hour of _____ a.m./p.m.

Signature of Clinical Director of Designee

Instructions: A voluntary patient who requests release, or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that: (1) if the patient was voluntarily admitted on his own application, and the request for release is made by a person other than the patient, release may be conditioned upon agreement of the patient; and (2) if a local mental health authority, or its designee is of the opinion that release of a patient would be unsafe for that patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the local mental health authority, or its designee, shall cause to be instituted involuntary commitment proceedings with the district court within the specified time period, unless cause no longer exists for instituting those proceedings. Written notice of that postponement with the reasons shall be given to the patient without undue delay. No judicial proceedings may be commenced with respect to a voluntary patient unless he has requested release. UCA 62A-15-627 (2002)

Notice of Denial of Request for Release From Local Mental Health Authority Form 31-2

- ▶ Voluntary patient requests release
- ▶ Staff feel patient meets commitment criteria
- ▶ Patient fills out Request For Release Form
- ▶ Staff completes Notice of Denial of Request for Release From Local Mental Health Authority
- ▶ Release may be denied by the facility for up to 48 hours while staff files Application for Commitment (White Sheet)
- ▶ Copy of Form 31-2 given to patient without undue delay
- ▶ Is a non-judicial temporary hold

Notice of Denial of Request for Release From Local Mental Health Authority Form 31-2

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Discussion

**NOTICE OF DENIAL OF REQUEST FOR RELEASE
FROM LOCAL MENTAL HEALTH AUTHORITY**

Patient Name: _____

To: _____, a voluntary patient, or parent, legal guardian, spouse, or adult next of kin of the above-named patient (circle one).

You are hereby notified that your Request for Release from the custody of
_____, which was received by the director or
Local Mental Health Authority

**designee on the _____ day of _____, 20_____, at _____
a.m./p.m., is denied for the reason that in my opinion release at this time would be
unsafe for said patient and others.**

**Release at this time is being postponed for up to 48 hours, (excluding
weekends and holidays) during which time proceedings for involuntary commitment
will have been initiated with the district court unless cause no longer exists for
instituting such proceedings.**

Dated this _____ day of _____, 20_____.

Signature of Director of Designee

Instructions: If a local mental health authority, or its designee is of the opinion that release of a (voluntary) patient would be unsafe for that patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the local mental health authority or its designee shall cause to be institutes involuntary commitment proceedings with the district court within the specified time period, unless cause no longer exists for instituting such proceedings. Written notice of that postponement with the reasons, shall be given to the patient without undue delay. UCA 62A-15-627 (2002)

The Commitment Rainbow

- ▶ Denial of Release
- ▶ **Pink Sheet** (Lower Burden of Proof)
- ▶ **Blue Sheet** (Lower Burden of Proof)
- ▶ **White Sheet** (Higher Burden of Proof)

Emergency Application for Temporary Commitment Without Certification (Pink Sheet)

- ▶ Filled out and signed by a Mental Health Officer or a Police Officer, who “observes behavior (*probable cause*) which leads to belief that the person is mentally ill and there is a **substantial likelihood of serious harm to self or others**”
- ▶ A Police Officer can detain and transport based on the observations of a Mental Health Officer’s report to them
- ▶ Authorizes hold for up to 24 hours excluding weekends and legal holidays

Emergency Application for Temporary Commitment Without Certification (Pink Sheet)

- ▶ DOCUMENTATION REQUIRED:
 - Statement of circumstances must document:
 - **Facts** which called person to attention of officer,
 - specific nature of danger, **and**
 - summary of observations upon which statement of danger is based
 - Be sure to document “facts” not conclusions

Emergency Application for Temporary Commitment Without Certification Form 34-2 (**Pink Sheet**)

- ▶ Please refer to Forms Packet
- ▶ 2 Page Form
- ▶ Discussion



**EMERGENCY APPLICATION
FOR INVOLUNTARY COMMITMENT WITHOUT CERTIFICATION
TO**

Local Mental Health Authority

_____, 20____

To The Director:

I, _____, a duly authorized mental health or peace officer have observed _____, in conduct which leads me to believe that there is probable cause that _____, is mentally ill and that there is substantial likelihood of serious harm to self or others unless taken into protective custody pending proceedings for examination and certification. I hereby make application for commitment of the said proposed patient to: _____.

Proposed Patient

Proposed Patient

Local Mental Health Authority

I took the proposed patient into protective custody under the following circumstance(s):

- (a) Statement of facts which called proposed patient to attention of officer: _____

- (b) Specific nature of danger: _____

- (c) Summary of observation upon which the statement of danger is based: _____

Names and addresses of persons to be notified of placement in custody of local mental health authority:

Guardian: _____
Address _____ Phone _____

Adult Family: _____
Address _____ Phone _____

Other: _____
Address _____ Phone _____

Signature of Mental Health Officer or Peace Officer

INSTRUCTIONS

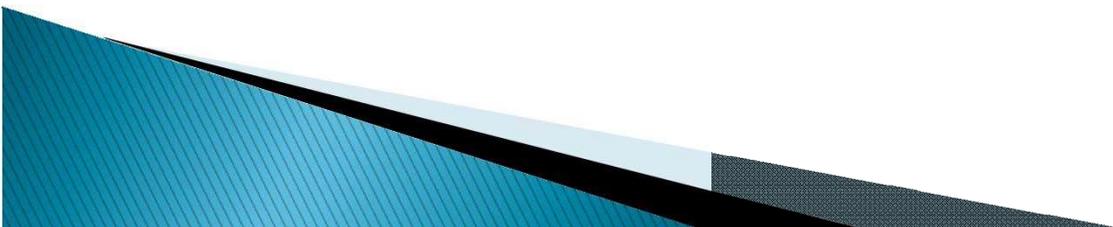
If a duly authorized peace officer observes a person involved in conduct that gives the officer probable cause to believe that the person is mentally ill, as defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into custody. The peace officer shall transport the person to be transported to the designated facility of the appropriate local mental health authority pursuant to this section, either on the basis of his own observation or on the basis of a mental health officer's observation that has been reported to him by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of a local mental health authority and make application for commitment of that person to the local mental health authority. A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, said person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-15-631.

Emergency Application for Temporary Commitment With Certification (Blue Sheet)

- ▶ Filled out and signed by:
 - An applicant
(responsible citizen with first-hand knowledge of the facts indicating mental illness and risk of injury) and
 - A physician or designated examiner within 3 days of having examined the patient
- ▶ Authorizes hold for up to 24 hours excluding weekends and legal holidays

Emergency Application for Temporary Commitment With Certification Form 34-1 (**Blue Sheet**)

- ▶ Please refer to Forms Packet
- ▶ 2 Page Form
- ▶ Discussion



**EMERGENCY APPLICATION FOR INVOLUNTARY
COMMITMENT WITH CERTIFICATION
TO**

Local Mental Health Authority

_____, 20__

To The Director:

I, _____ residing at _____,
State of _____, hereby request the temporary, involuntary commitment of

Proposed Patient to _____
Local Mental Health Authority.

I believe that the said proposed patient is likely to cause serious injury to himself or others if not immediately restrained and that the individual's condition or circumstances which lead to this belief are as follows: _____

Names and addresses of persons to be notified of placement into custody of local mental health authority:

Guardian: _____
Address Phone

Adult Family: _____
Address Phone

Other: _____
Address Phone

Applicant Signature

Relationship to proposed patient

**CERTIFICATE FOR EMERGENCY COMMITMENT
TO**

Local Mental Health Authority

I, _____, do hereby certify that I am a physician licensed under the laws of the State of Utah to practice medicine, or a medical officer of the United States Government in the State of Utah in the performance of my official duties, or a designated examiner appointed by the Division of Substance Abuse and Mental Health* and that I have examined _____
Proposed Patient, within a three-day period preceding this certification and am of the opinion that the proposed patient is mentally ill and, because of his mental illness, is likely to injure himself or others if not immediately restrained.

The pertinent data that I have obtained is as follows: _____

Dated this _____ day of _____, 20_____.

*Cross out terms not applicable

Signature Title

Instructions: An adult may be temporarily, involuntarily committed to a local mental health authority upon (i) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to himself or others if not immediately restrained, and stating the personal knowledge of the individual's condition or circumstances which lead to that belief; and (ii) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period preceding that certification, and that he is of the opinion that the individual is mentally ill and, because of his mental illness, is likely to injure himself or others if not immediately restrained. A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period the person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-15-631. UCA 62A-15-629

Differences in Pink & Blue Sheet Criteria

▶ Pink Sheet

- Completed by Police Officer or Mental Health Officer
- Conduct that leads an officer to conclude that the person has a mental illness
- “...because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others”

▶ Blue Sheet

- Page One – Completed by Applicant/Observer
- Page Two – Completed by DE or Licensed Physician
- Because of the mental illness, “is likely to injure self or others if not immediately restrained”

Non-Judicial Emergency Admissions

- ▶ Pink and Blue sheets get your patient from the outside to the inside of a psychiatric hospital, but there are a couple of catches:
 - The pre-admission or “crisis” team for Local Mental Health Authority needs to be notified to determine if a bed is available
 - The Local Mental Health Authority has the responsibility to determine placement of the individual



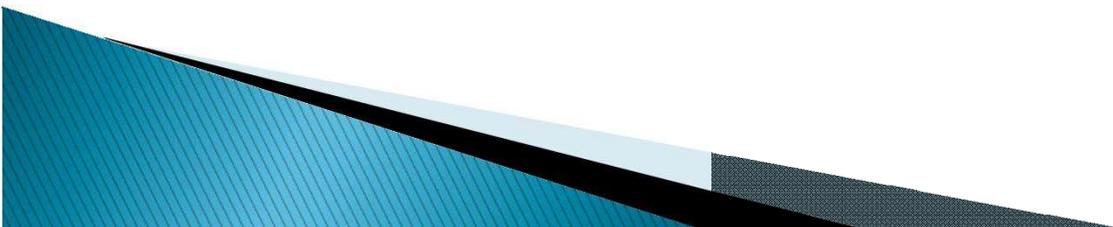
Patient May Be Detained In Any Appropriate Setting

- ▶ Commitment statutes stipulate that a patient may be detained in any environment that is adequate and appropriate
- ▶ Cannot be detrimental to their clinical needs and condition
- ▶ Example: patient filed on at nursing home, goes to court, gets committed and never comes to hospital



Three Options at Expiration of Non-Judicial Detention

- ▶ **1. Release the patient**
- ▶ **2. Patient consents to voluntary treatment**
- ▶ **3. File with District Court (White Sheet)**



Involuntary Commitment Criteria (Adult)

1. The individual has a mental illness, and
2. Because of the individual's mental illness, the proposed patient poses a substantial danger, as defined in 62A-15-602, to self or others which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty; and
3. The individual lacks the ability to engage in a rational decision-making process regarding the acceptance or rejection of treatment; and
4. There is no appropriate less-restrictive alternative; and
5. The local mental health authority can provide the individual with treatment that is adequate and appropriate to the individual's conditions and needs

Commitment Criteria

CLINICAL/BEHAVIORAL CRITERIA	1	The proposed patient has a mental illness.	A psychiatric disorder as defined by the current edition of the DSM published by the APA which substantially impairs a person's mental, emotional, behavioral, or related functioning.
	2	Because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others.	This may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty.
	3	The patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment.	Demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment.
TECHNICAL CRITERIA	4	There is no appropriate less-restrictive alternative to a court order of commitment.	This doctrine asserts that the breadth of legislative abridgement must be viewed in light of less drastic means of achieving the same basic purpose.
	5	The local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs.	This is an exclusionary criteria and would likely apply, for example, to substance abuse tx, medical tx for organic conditions, and tx for intellectual disability.

Application for Order of Involuntary Commitment Form 36-1 (White Sheet or Judicial Order)

- ▶ This is the standard form used to initiate an involuntary judicial civil commitment proceeding
- ▶ An affiant fills out the first page which must be notarized by notary public
- ▶ Second page is completed by physician or designated examiner who has examined patient in the last 7 days
- ▶ Application is delivered to District Court
- ▶ Court may issue an Order of Detention.

Procedure for Involuntary Commitment (White Sheet)

- ▶ Filed with District Court by affiant **and**
 - Physician or designated examiner who fills out and signs the 2nd page, after examining patient within past 7 days, **or**
 - Affiant claims proposed patient has refused to submit to an examination, then
 - Court may issue “Order to Determine Existing Facts and Preliminary Mental Health Report” which
 - Directs mental health staff to conduct an outreach interview and report back to the court

Application for Order of Involuntary Commitment Form 36-1

- ▶ Please refer to Forms Packet
- ▶ 2 Page Form
- ▶ Page 1 completed by affiant
- ▶ Page 2 completed by Physician or Designated Examiner
- ▶ Discussion

In the District Court of _____ County,
State of Utah

In the Matter of:

Application for Order of
Involuntary Commitment

Proposed Patient (Full Name)

Social Security Number

Case No: _____
County of: _____

_____, being first duly sworn upon oath, deposes and says:
Affiant

1. That _____ Date of Birth _____, now at: _____
Proposed Patient
is to the best knowledge and belief of the affiant, mentally ill and should be involuntarily
committed to: _____, pursuant to the provisions of Utah
Local Mental Health Authority
Code Annotated 62A-15-631 (2003).

Such belief is based upon the following facts, to wit: _____

2a.* That the said _____, has been examined by a licensed
Proposed patient
physician or examiner which is attached hereto and by this reference made a part hereof, or
2b.* That the said _____, has been requested to but has
Proposed patient
refused to submit to an examination of mental condition by a licensed physician or person
qualified as a designated examiner.

(*Strike either paragraph 2a or 2b)

Affiant

Relationship to Proposed Patient

Address

Subscribed and sworn to before me this _____ day of _____, 20 _____

Officer Authorized to Administer Oath
Utah Code Annotated 62A-15-631(1) 2002

DSAMH Form 36-1, Revised 2013
(Page 1 of 2)

Names and addresses of those to be notified:

Parent(s) or Legal Guardian: _____

Address Phone
Adult Family Member(s) _____
Relationship to proposed patient

Address Phone
Legal Counsel _____

Address Phone
Other Person(s) _____
Relationship to proposed Patient

Address Phone

CERTIFICATE

Upon the application of _____, I, _____
Affiant
a duly licensed physician in the State of Utah, a medical officer of the United States
Government in the performance of my official duties, or a designated examiner duly
appointed by the Division of Substance Abuse and Mental Health pursuant to UCA 62A-15-
602 (2002), examined: _____, on the _____ day of _____, 20 _____,

Proposed Patient
which is within a seven day period immediately preceding this certificate, and certify that in
my opinion the said proposed patient is mentally ill and should be involuntarily committed to

Local Mental Health Authority

Dated this _____ day of _____, 20 _____.

Signature

Title

Address

Instructions: "Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition of the proposed patient which lead to the belief that the individual is mentally ill and should be involuntarily committed. That application shall be accompanied by: (a) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that he is of the opinion that the individual is mentally ill and should be involuntarily committed; or (b) a written statement by the applicant that the individual has been requested to but has refused to submit to an examination of mental condition by a licensed physician or designated examiner. The application shall be sworn to under oath and shall state the facts upon which the application is based." UCA 62A-15-631(1) (2002)

DSAMH Form 36-1, Revised 2013
(Page 2 of 2)

Utah Code Annotated 62A-15-631(a)(b) (2003)

Order to Determine Existing Facts Form 36-2

- ▶ Please refer to Forms Packet
- ▶ 2 Page Form
- ▶ Page 1 is issued by the court
- ▶ Page 2 completed by a Mental Health Professional or a Designated Examiner from the Local Mental Health Authority
- ▶ The court **may** require this information before issuing an order of detention (Court Form 1st Page)
- ▶ Often used in circumstances where the patient has refused to be examined

IN THE DISTRICT COURT OF _____ COUNTY,

STATE OF UTAH

ORDER TO DETERMINE EXISTING FACTS

REPORT OF EXISTING FACTS

Local Mental Health Authority

IN THE MATTER OF:

Proposed Patient

Prior to issuing a judicial order, this Court requires the applicant to consult with the appropriate local mental health authority, or directs a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the Court.*

RECOMMENDED this ____ day of _____, 20 ____

ORDERED this ____ day of _____, 20 ____

District Court Judge or Mental Health Commissioner

Proposed Patient

At the direction of the Court, consultation with the applicant, or interviews with the applicant and the proposed patient were conducted to determine the existing facts. Based upon the consultation or interviews, I make the following report: _____

In the opinion of the undersigned there is sufficient or insufficient cause to warrant further proceedings (circle one).

Dated this ____ day of _____, 20 ____.

Signature

Title

Instructions: Prior to issuing a judicial order, the court may require the applicant to consult with the appropriate mental health authority, or may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court. 62A-15-631(2) (2003)

Procedures for Involuntary Commitment (White Sheet) Form 36-5

- ▶ Court issues “Order for Commitment and /or Detention Pending Hearing and/or Examination”
- ▶ Facility may send to Court “Report of Clinical Director or His/Her Designee Upon Admission” rendering a second opinion
- ▶ Court appoints two Designated Examiners within 24 hours of receiving application
- ▶ Court sets date for mental hearing within 10 calendar days of receipt of application

Application for Order of Involuntary Commitment Form 36-5

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Page 1 completed by affiant
- ▶ Approved by District Court Judge
- ▶ Discussion

IN THE DISTRICT COURT OF _____ COUNTY,

STATE OF UTAH

IN THE MATTER OF

ORDER FOR COMMITMENT AND/
OR DETENTION PENDING HEARING
AND/OR EXAMINATION

Proposed Patient (Full Name)

Case No. _____

Date of Birth

Social Security Number

Proceedings for the involuntary commitment of the above-named proposed patient have been filed with this Court. It appears from said application and reported facts that there is a reasonable basis to believe that the proposed patient has a mental illness which poses a substantial danger to himself, others, requiring involuntary commitment pending examination and hearing, or that the proposed patient has refused to submit to an interview with a mental health professional as directed from the Court.

THEREFORE, IT IS HEREBY ORDERED, pursuant to the provisions of Utah Code Annotated 62A-15-631 (2013), that such proposed patient shall be placed in the custody of the Local Mental Health Authority or in a temporary emergency facility to be detained for the purpose of examination.

ORDERED this ____ day of _____, 20____

District Court Judge

**JUDICIAL ENDORSEMENT
FOR CUSTODY AND TRANSPORTATION**

I, the undersigned, hereby authorize a mental health officer or peace officer to immediately take _____ into custody and transport said proposed patient to the local mental health authority or to a temporary emergency facility to be detained in accordance with the above order.

Proposed Patient

Dated this ____ day of _____, 20____

District Court Judge

Report of Local Mental Health Authority/Designee, of Examination Upon Admission Form 36-8

- Report to District Court completed by DE
- Indicates that DE has examined proposed patient
- Has formed an opinion
- Identifies what the DE's opinion is



Report of Local Mental Health Authority/Designee, of Examination Upon Admission Form 36-8

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Form completed by Clinical Director/ Designee
- ▶ Discussion

**REPORT OF LOCAL MENTAL HEALTH AUTHORITY/DESIGNEE
OF EXAMINATION UPON ADMISSION**

To the District Court of _____ County, State of Utah:

_____, has been placed in the custody of _____
Proposed Patient Local Mental Health Authority

under the provisions of Utah Code Annotated 62A-15-631 (2003). I have examined
the above-named proposed patient and in my opinion, _____ :
Proposed Patient

(Cross out phrases not applicable)

- (a) is mentally ill;
- (b) is not mentally ill;
- (c) has agreed to become a voluntary patient pursuant to UC 62A-15-625 (2002);
- (d) has not agreed to become a voluntary patient;
- (e) treatment programs are available and acceptable to the patient without court proceedings;
- (f) treatment programs are not available and acceptable without court proceedings.

Dated this _____ day of _____, 20_____.

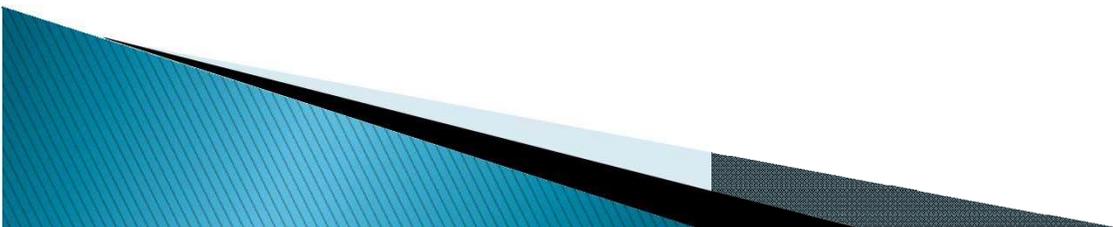
Signature of Director or Designee

Title

Instructions: "Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-15-624, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, he shall immediately send the report in writing to the clerk of the court." UCA 62A-15-631(3) 2003

Commitment Hearing

- ▶ Then, the patient is scheduled for a “Commitment Hearing”
- ▶ This occurs within 10 calendar days of being “filed on” by the local mental health authority
- ▶ Each court schedules commitment hearings on a specific day of the week
- ▶ Each court has a specific deadline to be added to the court calendar
- ▶ Examples of various court calendars



Commitment Hearing

- ▶ Not the same as “Mental Health Court”
- ▶ Patients are provided with legal counsel
- ▶ 2 mental health designated examiners interview the patient
- ▶ “The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.”
- ▶ District Court Judge or Mental Health Commissioner presides

IN THE DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH

IN THE MATTER OF:

Proposed Patient (Full Name)

Social Security Number Date of Birth

INITIAL FINDINGS AND
ORDER OF COMMITMENT

Case No: _____

This matter was duly heard on the _____ day of _____, 20____, and
the Court, pursuant to UCA 62A-15-631(10), having found by clear and convincing
evidence that:

- a. the proposed patient has a mental illness;
- b. because of the proposed patient's mental illness he poses a substantial danger of physical injury to himself, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;
- c. the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to with the possible risks of accepting or rejecting treatment;
- d. there is no appropriate less-restrictive alternative to a court order of commitment; and
- e. the local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs,

NOW THEREFORE, IT IS ORDERED that _____ shall be
committed to _____, for a temporary period of _____,
Local Mental Health Authority
which does not exceed six months unless sooner discharged by proper authority.

Recommended this _____ day of _____, 20_____.

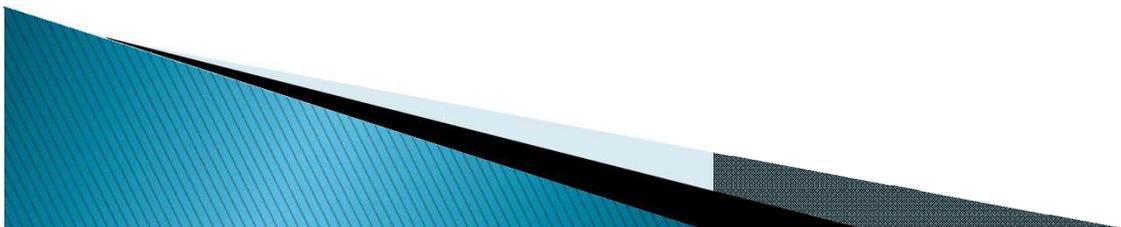
Mental Health Commissioner

ORDERED this _____ day of _____, 20_____.

District Court Judge

Notice to Drop Proceedings Prior to a Hearing

- ▶ It is possible to drop the commitment proceedings prior to the hearing if:
 - Patient decides to become voluntary
 - Patient no longer meets criteria
 - Other less-restrictive treatment alternatives are available and appropriate to need



Notice to Drop Proceedings Prior to a Hearing Form 36-15

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Completed by Local Mental Health Authority
- ▶ Discussion

**NOTICE TO DROP COMMITMENT PROCEEDINGS
PRIOR TO A HEARING**

Local Mental Health Authority

Proposed Patient

Date: _____

TO THE DISTRICT COURT OF _____ COUNTY, STATE OF UTAH:

As a designated examiner(s), a local mental health authority or its designee, for the above-named proposed patient, I respectfully request that the application for involuntary commitment to the local mental health authority be dismissed.

This request is based upon the following:*

- a) the patient is not mentally ill, or**
- b) the patient has agreed to become a voluntary patient under Section 62A-15-625, or**
- c) treatment programs are available and acceptable without court proceedings.**

*Cross out terms not applicable

Signature

Title

Instructions: A time for a hearing to be held within ten calendar days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing that the patient is not mentally ill, that he has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application. 62A-15-631(8)(c) (2003)

Procedure for Involuntary Commitment (White Sheet)

▶ **Commitment Hearing:**

- All patients entitled to representation by legal counsel
- District Court Judge/Mental Health Commissioner presides
- Persons specified to be present at hearing include the patient, family, affiant, and all others whom the Court is required to send notice to
- Court receives testimony from examiner and others
- Cross examination of witnesses/examiners by counsel
- Evidence is subject to legal rules of evidence

Procedures for Involuntary Commitment (White Sheet)

- ▶ Findings and Order of Commitment
 - Matter may be dismissed if criteria is not met
 - If committed, court will specify a period of commitment up to 6 months

- ▶ Upon review hearing, court may order commitment for an indeterminate period if so recommended by examiners
 - Patient is still entitled to reviews at 6 month intervals



Option at Review Hearing

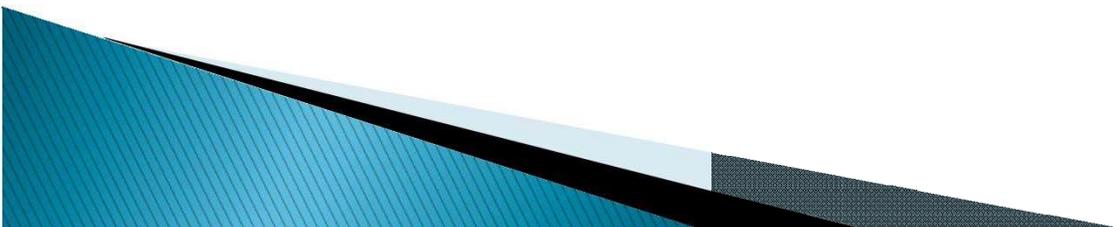
- ▶ Only at a review hearing, an examiner may testify that:
 - Based on well-documented history the patient has demonstrated a consistently reoccurring pattern of dropping out of treatment, stopping medications and becoming dangerous
 - It is now recommended that patient be continued on the order, even though he/she is not posing a substantial danger at this time

At The Commitment Hearing

- ▶ Court may “dismiss” the application in which case the patient is free to leave
- ▶ May specify a period of commitment up to 6 months. (commonly 30, 60 or 90 days)
- ▶ Reviewed at the end of the specified commitment, unless terminated by the Local Mental Health Authority designee, prior to review hearing

Obligation of Mental Health Authority to Continually Assess Need for Commitment

- ▶ Obligation to try to treat patients in the least restrictive environment that is adequate and appropriate to their need
- ▶ When a patient no longer meets criteria, or is no longer benefited by an order of commitment, it may be terminated by filing a Notice of Discharge from Judicial Order



Notice of Discharge From Judicial Order of Commitment Form 42

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Completed by Local Mental Health Authority designee
- ▶ Discussion

NOTICE OF DISCHARGE FROM JUDICIAL ORDER OF COMMITMENT

Local Mental Health Authority

IN THE MATTER OF:

Patient

Case Number

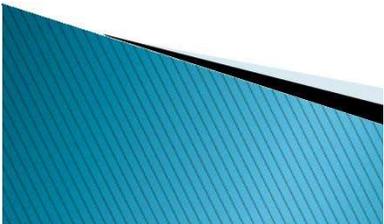
To the District Court of _____ County, State of Utah:

The reasons justifying the judicial order of commitment of the above-named patient no longer exist and the patient is discharged from commitment.

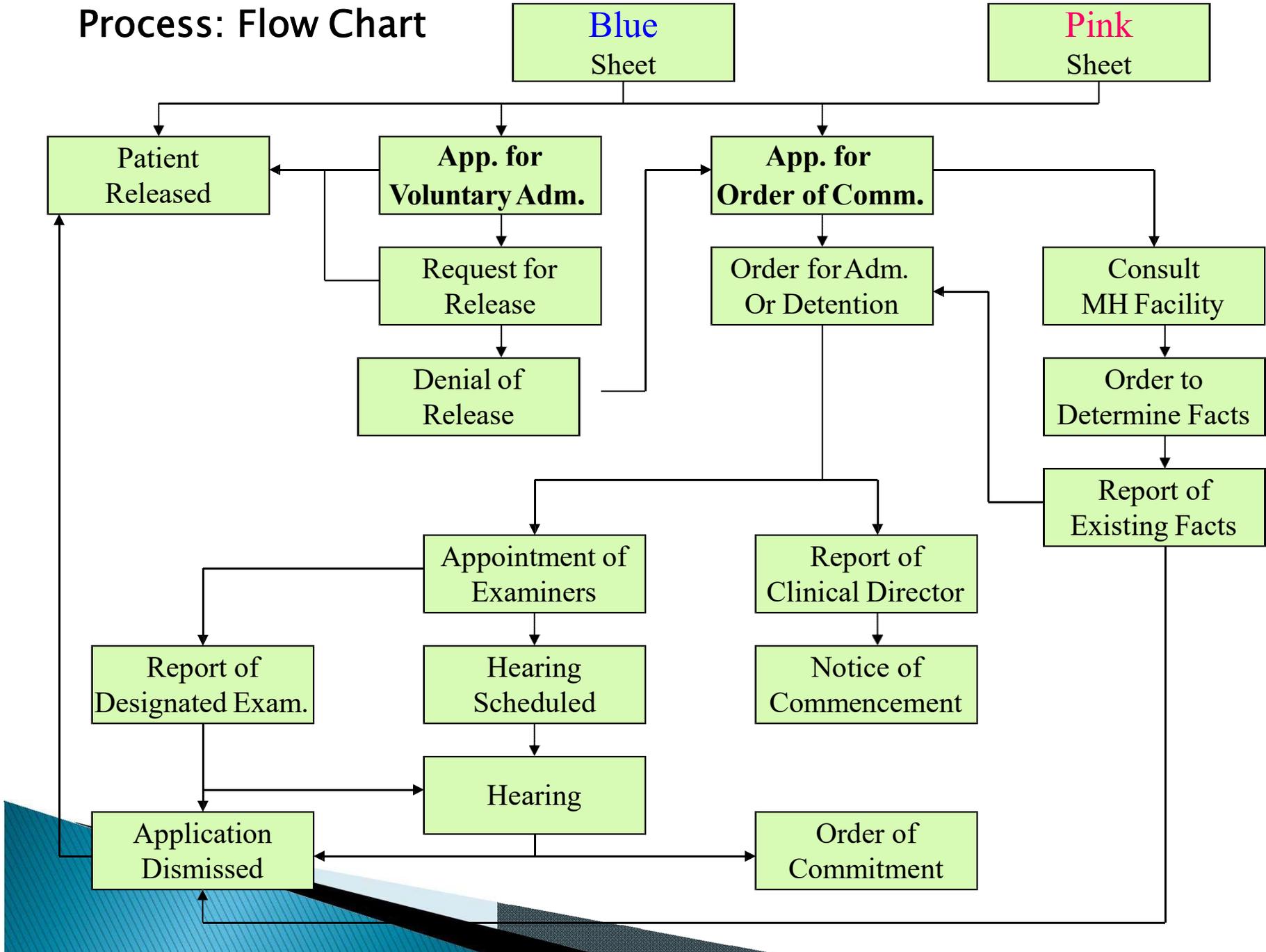
Dated this _____ day of _____, 20_____.

Director or Designee

Instructions: Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held. UCA 62A-15-636 (2002)



Adult Commitment Process: Flow Chart



Least Restrictive Environment

- ▶ Commitment is to “treatment” not necessarily to a place or facility
- ▶ People are usually committed while they are inpatient (but not necessarily so)
- ▶ They can be released from inpatient to “the least restrictive environment” available which provides adequate and appropriate care
- ▶ Patient signs a “Notice of Conditional Release” that allows patient to be re-hospitalized if not meeting terms of NCR, or the less restrictive environment is aggravating the mental illness

Notice of Conditional Release

- ▶ Must be maintained in the least restrictive environment
- ▶ A “Notice of Conditional Release” is used to transition patient to a less restrictive environment
 - Patient must agree in writing to comply with a contingency plan of treatment
- ▶ Patient may be re-hospitalized on “Order of Placement in a More Restrictive Environment” if
 - Patient fails to comply with terms specified in Notice of Conditional Release, or
 - The less restrictive environment is exacerbating or aggravating the mental illness

Notice of Conditional Release Form 43-1

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Completed by Local Mental Health Authority designee
- ▶ Discussion



TO THE DISTRICT COURT OF _____ COUNTY,

STATE OF UTAH

NOTICE OF CONDITIONAL RELEASE

Local Mental Health Authority

In the Matter of:

Patient

Facility

The above-named patient has been conditionally released from this facility on the ____ day of _____, 20____, with the judicial order of involuntary commitment intact. The conditions of the release have been agreed to in writing by the patient.

Dated this ____ day of _____, 20____.

Signature

Title

TREATMENT PLAN UPON WHICH CONDITIONAL RELEASE IS BASED:

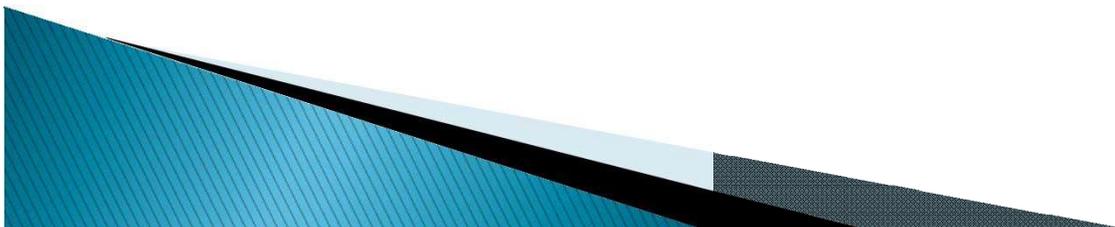
Patient Signature

Patient May be Re-hospitalized

- ▶ ORDER OF PLACEMENT OR RETURN TO A MORE RESTRICTIVE ENVIRONMENT:
 - If there is evidence the less restrictive environment is exacerbating the patient's illness
 - If the patient fails to comply with the terms of the Conditional Release
- ▶ If a patient has been discharged from a more restrictive setting for more than 30 days and disagrees with the placement, they may request a court hearing. The request must occur within 30 days of placement into a more restrictive environment

Order of Placement Into a More Restrictive Environment Form 43-2

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Form completed by Local Mental Health Authority designee
- ▶ Discussion



ORDER OF PLACEMENT INTO A MORE RESTRICTIVE ENVIRONMENT

Local Mental Health Authority

TO: Patient Case No.

Having been previously committed to Local Mental Health Authority

on Date of Commitment, by order of the District

Court and having been placed in a less restrictive environment is aggravating your mental illness or that you have failed to comply with the specified treatment plan to which you have agreed in writing as follows:

Pursuant to Utah Code Annotated 62A-15-637(2) (2002), you are hereby ordered to Local Mental Health Authority immediately. You or your

legal representative, to which you are entitled, may request a hearing of the change.

Dated this day of 20 Director or Designee

ENDORSEMENT FOR CUSTODY AND TRANSPORTATION

I, the undersigned, hereby request a mental health officer or peace officer to immediately take Proposed Patient into custody and transport said proposed patient to the local mental health authority or to a temporary emergency facility to be detained in accordance with the above order.

Dated this day of 20

Director or Designee

Instructions: A local mental health authority or its designee is authorized to issue an order for the immediate placement of a patient not previously released from an order of commitment into a more restrictive environment, if the local mental health authority or its designee has reason to believe that the less restrictive environment in which the patient has been placed is aggravating the patient's mental illness or that the patient has failed to comply with the specified treatment plan to which he had agreed in writing. That order shall include the reasons therefor and shall authorize any peace officer to take the patient into physical custody and transport him to a facility designated by the division. Prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued release from inpatient care, copies of the order shall be personally delivered to the patient and sent to the person in whose care the patient is placed. The order shall also be sent of the patient's counsel of record and to the court that entered the original order of commitment. The order shall inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures prescribed in Subsection 62A-15-631(9) (included below). If the patient has been in the less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient his representative may request a hearing within 30 days of the change. UCA 62A-15-637(2)(2002)

- UCA 62A-15-631 (9) (a) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the patient before the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found. (b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record. (c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners. (d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient. (e) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence. (f) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information: (A) the detention order; (B) admission notes; (C) the diagnosis; (D) any doctors' orders; (E) progress notes; (F) nursing notes; and (G) medication records pertaining to the current commitment. (ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

Notice of Transfer of Patient

- ▶ Statute requires the courts to maintain a list of all patients under commitment
- ▶ At specified intervals that court shall inform the patient and relevant parties of necessity for review hearing
- ▶ In order to do this, the court must be informed of any transfers of care and the location at which patient may be contacted

Notice of Transfer of Patient Form 41

- ▶ Please refer to Forms Packet
- ▶ 1 Page Form
- ▶ Form completed by Local Mental Health Authority designee
- ▶ Discussion

NOTICE OF TRANSFER OF PATIENT

IN THE MATTER OF: _____ **TRANSFERRED FROM:** _____
Treatment Facility

Patient

Court Case Number

TRANSFERRED TO: _____
Treatment Facility or Program

To the District Court of _____, County, State of Utah, and to the law firm of: _____
(patient's legal counsel of record)

Record the specific place of residence where this patient can be located at the time for the next court review of commitment status:

ADDRESS: _____

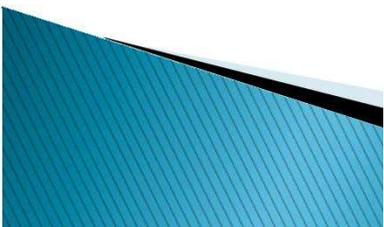
City State Phone

The above transfer was made on the ____ day of _____, 20____.
The judicial order of commitment is still intact.

Dated this ____ day of _____, 20____.

Signature of Director or Designee

Title



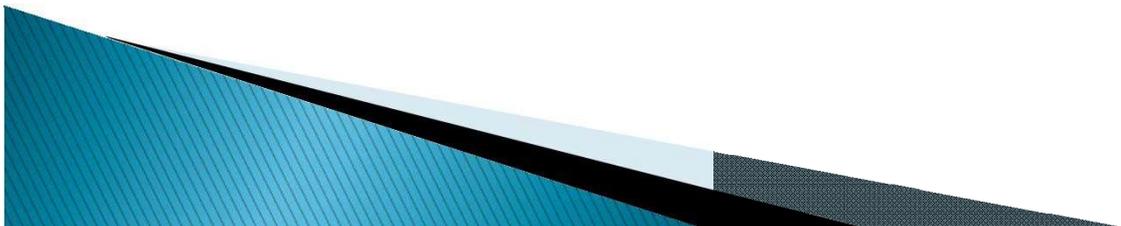
NOTICE OF CONTINUATION OF INDETERMINATE COMMITMENT

- When LMHA intends to continue the order of commitment, the LMHA completes the Notice of Continuation of Indeterminate Commitment, Form 36-14
- Patients on indeterminate commitment status are entitled to request a review hearing at 6 month intervals and should be notified of that right each time Form 36-14 is completed, to continue the order of commitment
- If the LMHA determines the conditions no longer justify the order of commitment, the LMHA completes the Notice of Discharge from Judicial Order of Commitment, Form 42 and is signed by the Director or his/her designee.

Notice of Continuation of Indeterminate Commitment Form 36-14

Please refer to Forms Packet
1 Page Form 36-14

Form completed by Local Mental
Health Authority designee
Discussion



NOTICE OF CONTINUATION OF INDETERMINATE COMMITMENT

Local Mental Health Authority

TO: _____

Case No: _____

A review has been made of the conditions justifying your Judicial Order of Commitment for an indeterminate period, as required by law. After such review, it has been determined that those conditions continue to exist. Therefore, the judicial order of commitment will continue in effect.

You have the right to a review hearing by making a request to the court.

**A copy of this notice has been sent to: _____,
your legal counsel of record.**

Dated this _____ day of _____, 20____.

Signature and Title

Instructions: "The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and his counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10)." UCA 62A-15-631(11)(c) (2002)

Additional Statutory Requirements

- ▶ The examiner who signs the Application for Commitment cannot serve as examiner in the hearing for that patient
- ▶ One of the two examiners in the hearing must be a physician
- ▶ The patient's legal counsel has the right to approve or appoint one of the two examiners if they so choose
- ▶ Duty to inform patient at time of examination that information gathered will be presented in hearing.
- ▶ (Discuss right and wrong way to approach patient—not like a Miranda warning.)

Designated Examiner Certification Training

5. Children's Procedure/Paperwork

Child/Minor Defined

- ▶ Child means a person under 18 years of age.

UCA 62A-15-701(1)

In Juvenile Court, an individual can still be considered a Minor through age 21

- ▶ If a Minor over the age of 18, is in State's custody and in need of the commitment process, the adult process would be used

Civil Commitment: Which Children?

A child is entitled to due process proceedings whenever they:

1. May receive or receives services through the public mental health system **and**
2. Is placed, by a local mental health authority or its designee, in a physical setting where his liberty interests are restricted, including residential and inpatient placements. UCA 62A-15-702
 - Medicaid
 - Uninsured (if the Local Mental Health Authority is financially responsible)
 - In state's custody (DHS, DCFS, DJJS)

Civil Commitment: Which Children?

A due process proceeding is not required if any of the following apply:

- ▶ The child is not eligible to receive inpatient or residential services through the public mental health system
- ▶ The child's stay is not being paid for by the LMHA
- ▶ The parent or legal guardian of a child under the age of 18 years has the authority to provide informed consent for hospitalization
 - Privately Funded
 - Private Insurance

Involuntary Commitment Criteria (LMHA or Designee Admissions Only)

The following circumstances clearly exist:

1. The child has a mental illness; **and**
2. The child demonstrates a risk of harm to himself or others; **and**
3. The child is experiencing significant impairment in his ability to perform socially; **and**
4. The child will benefit from care and treatment by the local mental health authority; **and**
5. There is no appropriate less restrictive alternative

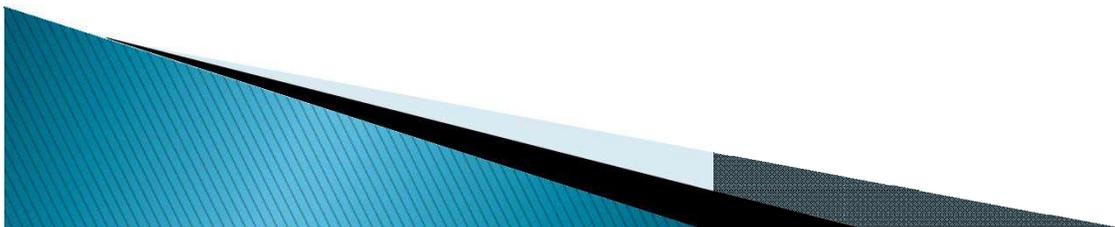
62A-15-703 (4)

Designated Examiners (Neutral & Detached Fact Finders)

- ▶ In the commitment of a child, the Designated Examiner is known as a Neutral & Detached Fact Finder (NDFF) 62A-15-703(3)(a)
- ▶ The DE (NDFF) who conducts the inquiry:
 - Should not be involved in the child's treatment
 - May not profit, financially or otherwise, from the commitment or physical placement of the child in that setting 62A-15-703(3)(b)
 - LMHA may authorize DE's in a nonprofit hospital inpatient setting, to conduct Civil Commitment proceedings on behalf of the LMHA

Commitment Process (Neutral & Detached Fact Finders)

- ▶ In the commitment process for children, the Designated Examiner has a dual role, serving both as a Neutral and Detached Fact Finder (NDFF) and in the role of a judge
- ▶ For children, the commitment process is informal and it is not a court proceeding, but it should not become so informal that statute is not followed or rights are not protected



Commitment Process

- ▶ **Prior** to a Local Mental Health Authority placing a child in residential or inpatient levels of care, physical custody must be transferred to the Local Mental Health Authority by either:
 - an Emergency Application for Commitment (Pink or Blue Sheet)
 - or a Civil Commitment Proceeding DE (NDFF)

62A-15-703 (1)&(6)

Commitment Process & Physical Custody

- ▶ When a child is committed to the Local Mental Health Authority (LMHA), **physical custody of the child is transferred to the LMHA** 62A-15-703 (1)
- ▶ Custody is transferred for the purpose of placement in residential/inpatient levels of care
- ▶ LMHA rights & responsibilities when given physical custody 62A-15-701 (4)
 - Placement of a child in any residential or inpatient setting;
 - The right to physical custody of a child;
 - The right and duty to protect the child; and
 - The duty to provide, or insure that the child is provided with adequate food, clothing, shelter, and ordinary medical care

Levels of Custody

- ▶ There are significant differences between how statutes for various state agencies describe levels of custody for children
- ▶ The Division of Substance Abuse & Mental Health statute refers to “Physical” and “Legal Custody”
- ▶ Juvenile Court (DHS/DCFS/DJJS) refers to “Legal Custody” and “Guardianship”
- ▶ “Legal Custody” means something different if a child is in parental custody vs. in state’s custody

Who Has What Kind of Custody?

Custody	Parental	DHS/DCFS/DJJS
Consent to Routine Therapy	Physical Custody	Legal Custody
<i>The Commitment Proceeding transfers physical custody to the Local Mental Health Authority</i>		
Consent to Inpatient Hospitalization & Anti-psychotic medication	Legal Custody	Guardianship

Who Has Custody of the Child?

Why it Matters

- ▶ The person/agency with the “Physical/Legal Custody” only (Physical/Legal) of a child, may consent to routine therapy, but **does not** have the ability to consent to inpatient hospitalization or the administration of antipsychotic medication
- ▶ The person with the “Legal Custody/Guardianship” of a child **may consent** to inpatient hospitalization and/or the administration of antipsychotic medication. **This person must sign the admission paperwork**

Emergency Exception

- ▶ When the child is in DHS Legal Custody (DHS, DCFS, DJJS)
- ▶ Statute 78A-6-105(e) allows the right, in an emergency, to authorize surgery or other extraordinary care
- ▶ This means that a child's worker from one of these agencies may consent to inpatient psychiatric hospitalization during an emergency

Emergency Application for Commitment (With or Without Certification)

Similar to adults, with exceptions:

- The time restriction on the Pink or Blue Sheet is 72 hours (maximum) excluding Saturdays, Sundays, and legal holidays
- The Forms Are Different for Children
 - Emergency Application for Commitment of Child Without Certification (The **Pink Sheet**)
(2 pages) *Form 0029*
 - Emergency Application for Commitment of Child With Certification (The **Blue Sheet**)
(2 pages) *Form 0031*

**STATE OF UTAH
EMERGENCY APPLICATION FOR COMMITMENT OF CHILD
WITHOUT CERTIFICATION
TO PHYSICAL CUSTODY OF LOCAL MENTAL HEALTH AUTHORITY**

_____, 20____

To The Director:

I, _____, a duly authorized mental health or peace officer have observed
_____,
Child (person under 18 years of age)
in conduct which leads me to believe that there is probable cause
that the above-named child is mentally ill and that there is a substantial likelihood of serious harm to self or
others unless taken into custody pending proceedings for examination and certification. I hereby make
application for commitment of said child to _____.
Local Mental Health Authority

Said child was taken into protective custody under the following circumstances:

- a) Statement of facts which called the child to the attention of the officer: _____

- b) Specific nature of the danger: _____

- c) Summary of the observations upon which the statement of danger is based: _____

Names and addresses of persons to be notified of placement into custody:

Parent/Legal Guardian:

Address Phone

Other (specify relationship to child):

Address Phone

Mental Health/Peace Officer Signature

Address Phone

INSTRUCTIONS

UCA 62A-15-703(6): "... a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629 (1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied."

**STATE OF UTAH
EMERGENCY APPLICATION FOR COMMITMENT OF CHILD
WITH CERTIFICATION
TO PHYSICAL CUSTODY OF LOCAL MENTAL HEALTH AUTHORITY**

To The Director: _____, 20____
 I, _____, residing at _____
 State of _____, hereby request the commitment of _____
Child (person under 18 years of age)
 age _____, located at: _____, to the physical custody of _____
Address of child

 Local Mental Health Authority

I believe that said child is likely to cause serious injury to self or others if not immediately restrained. Personal knowledge of the child's condition or circumstances which lead to this belief are: _____

Names and addresses of persons to be notified of placement into custody:
 Parent/Legal Guardian: _____
Address Phone

 Other (specify relationship to child): _____
Address Phone

 Applicant Signature/Title _____
 Address Phone _____

**CERTIFICATE FOR COMMITMENT OF CHILD
TO
PHYSICAL CUSTODY OF LOCAL MENTAL HEALTH AUTHORITY**

I, _____, do hereby certify that I am a licensed physician or a designated examiner appointed by the Division of Substance Abuse and Mental Health and that I have examined _____
Child (person under 18 years of age)
 within a three-day period immediately preceding this certification and that I am of the opinion that said child is mentally ill and because of his/her mental illness is likely to injure self or others if not immediately restrained.

I base my opinion on the following: _____

DATED this _____ day of _____ 20 _____.

Signature/Title

Address Phone

Instructions: UCA 62A-15-703(6): "... a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629 (1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied."

Commitment Proceeding

(Petition for Commitment)

- ▶ A child is entitled to due process proceeding
- ▶ The commitment proceeding shall be initiated by a Petition for Commitment
- ▶ A Petition for Commitment can be filled out by anyone who has first-hand knowledge of the child demonstrating a risk of harm to themselves or others and who suspects that the child has a mental illness
- ▶ A copy of the petition should be given to the Local Mental Health Authority, or its designee, who will then provide a copy to the DE acting as the NDFF
- ▶ The Petition for Commitment should not be filled out by the same person who is conducting the Commitment Proceeding DE (NDFF)

Petition for Commitment of Physical Custody of Child to the Local Mental Health Authority (*Form 0001*)

- ▶ Used to initiate Civil Commitment Proceedings
 - 1 Page Form
 - Please Refer to Forms Packet
 - Discussion

**STATE OF UTAH
TO THE LOCAL MENTAL HEALTH AUTHORITY**

_____ COUNTY

IN THE MATTER OF:

**PETITION FOR COMMITMENT
OF PHYSICAL CUSTODY OF
CHILD TO THE LOCAL MENTAL
HEALTH AUTHORITY**

Child (person under 18 years of age)

County

I, _____, a responsible person who has reason to know, depose and say:

_____, DOB: _____, residing at: _____,
Minor

is to the best knowledge and belief of the affiant, mentally ill and should be committed to the physical

custody of _____, pursuant to the provisions of Utah Code Annotated
Local Mental Health Authority

62A-15-703 (2003).

Such belief is based upon person knowledge to the following facts:

Dated this ____ day of _____, 20 ____.

Affiant Signature

Relationship to Child

Address

Address

Phone

Instructions: Child ["Child" means a person under 18 years of age.] UCA 62A-15-701(1) "A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section. That commitment proceeding shall be initiated by a petition for commitment..." UCA 62A-15-703(1)(2) The completed form is filed with the Local Mental Health Authority.

Commitment Proceeding

(Notice of Commitment Proceeding)

- ▶ Notice of the Commitment Proceeding should be given to the following parties prior to the proceeding:
 - The child
 - The child's parent/guardian
 - The person who submitted the Petition for Commitment
 - A representative of the Local Mental Health Authority
 - Any other person the DE acting as the NDFF chooses to receive testimony from
- ▶ The parties noted above should be afforded an opportunity to appear and to address the Petition for Commitment. 62A-15-703 (5)(b)

Commitment Proceeding

(Notice of Commitment Proceeding)

- ▶ If only one parent is present or is being provided with notice, clarify the legal custodial arrangement
- ▶ Whenever application for commitment is made by a person other than the child's parent or guardian, the LMHA shall notify the child's parent(s) or guardian
- ▶ The parent(s) shall be provided sufficient time to prepare and appear at any scheduled proceeding
- ▶ If notice is given by phone, document on form

Notice of Proceeding of Child or Commitment of Physical Custody to the Local Mental Health Authority *(Form 0003)*

- ▶ Notice to child and appropriate others that an application has been filed and a hearing has been set
 - 1 Page Form
 - Please Refer to Forms Packet
 - Discussion

Commitment Proceeding

The commitment proceeding shall be:

A careful, diagnostic inquiry 62A-15-703(2)

- ▶ Conducted by a Designated Examiner acting as a Neutral & Detached Fact Finder (NDFF)

62A-15-703 (2)

- ▶ Conducted in as informal a manner as possible

62A-15-703 (5)(a)

- ▶ Conducted in a physical setting that is not likely to have a harmful effect on the child 62A-15-703 (5)(a)

Commitment Proceeding

Documents to be Provided to the DE (NDFF) at the Commitment Proceeding 62A-15-703 (5)(e)

- The Petition for Commitment
- The admission notes
- The child's diagnosis
- Physicians' orders
- Progress notes
- Nursing notes
- Medication records
- Other pertinent documents

Commitment Proceeding (Child Participation)

- ▶ The DE (NDFF) may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding 62A-15-703 (5)(d)

Commitment Proceeding (Outcome)

- ▶ When a decision for commitment is made, the DE (NDFF) shall:
 - Inform the child and his parent or legal guardian of the decision, and of the reasons for the decision
 - State in writing the basis of the decision, with specific reference to each of the criteria
 - State the duration of the commitment - which may not exceed 180 days
 - Inform the child and his parent or legal guardian of their right to appeal

Commitment Proceeding (Outcome)

A copy of the *Commitment Proceeding Form* should be provided to:

- Child if appropriate (depending on age)
- Parent(s) or legal guardian/custodian
- Residential or Inpatient Facility
- Local Mental Health Authority
- LMHA has the responsibility to place a copy in the child's chart

Commitment of Physical Custody of Child to Local Mental Health Authority Proceeding (*Form 0005*)

- ▶ DE (NDFF) report of commitment proceeding
 - 2 Page Form
 - Please Refer to Forms Packet
 - Discussion

STATE OF UTAH

COMMITMENT OF PHYSICAL CUSTODY OF CHILD TO LOCAL MENTAL HEALTH AUTHORITY PROCEEDING

I, the undersigned, hereby certify that I am a neutral and detached fact finder as defined in UCA 62A-15-602(3); designated by the Division of Substance Abuse and Mental Health, and that I did conduct a commitment proceeding for transfer of physical custody to the local mental health authority for Child (person under 18 years of age), on the ___ day of ___, 20___, to determine if the child meets the criteria established in UCA 62A-15-703.

Following a careful, diagnostic inquiry, I now find the following circumstances to exist:

- checkbox the child has a mental illness, as defined in Subsection 62A-15-602(8): Basis for decision:
checkbox the child demonstrates a risk of harm to himself or others; Basis for decision:
checkbox the child is experiencing significant impairment in his ability to perform socially; Basis for decision:
checkbox the child will benefit from care and treatment by the local mental health authority; and Basis for decision:
checkbox there is no appropriate less-restrictive alternative. Basis for decision:

IT IS ORDERED that ___ child ___, be committed to the physical custody of ___ Local Mental Health Authority ___, for a temporary period of ___ (does not exceed 6 months) ___, unless discharged sooner by the Local Mental Health Authority.

OR

IT IS ORDERED that the petition for the commitment of ___ child ___, be dismissed.

DATED this ___ day of ___, 20___.

Designated Examiner/Neutral and Detached Fact Finder Signature

Copies Provided to:

- checkbox Child (person under 18 years of age)
checkbox Parent/Legal Guardian
checkbox Residential or Inpatient Facility
checkbox LMHA Representative
checkbox Other

Instructions: "A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section. That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

The neutral and detached fact finder who conducts the inquiry:(a) shall be a designated examiner, as defined in Subsection 62A-15-602(3); and (b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting. The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing. The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record." UCA 62A-15-703

Additional Due Process Proceedings

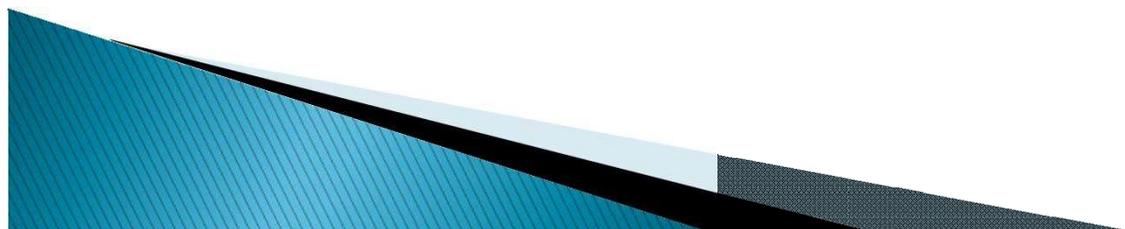
- ▶ Even though a child has been committed to the physical custody of the LMHA, the child is still entitled to additional due process proceedings before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. 62A-15-703 (14)
- ▶ Those treatments include but are not limited to:
 - Antipsychotic medication
 - Electroshock therapy
 - Psychosurgery
- ▶ With regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held 62A-15-704(3)

Right to Appeal

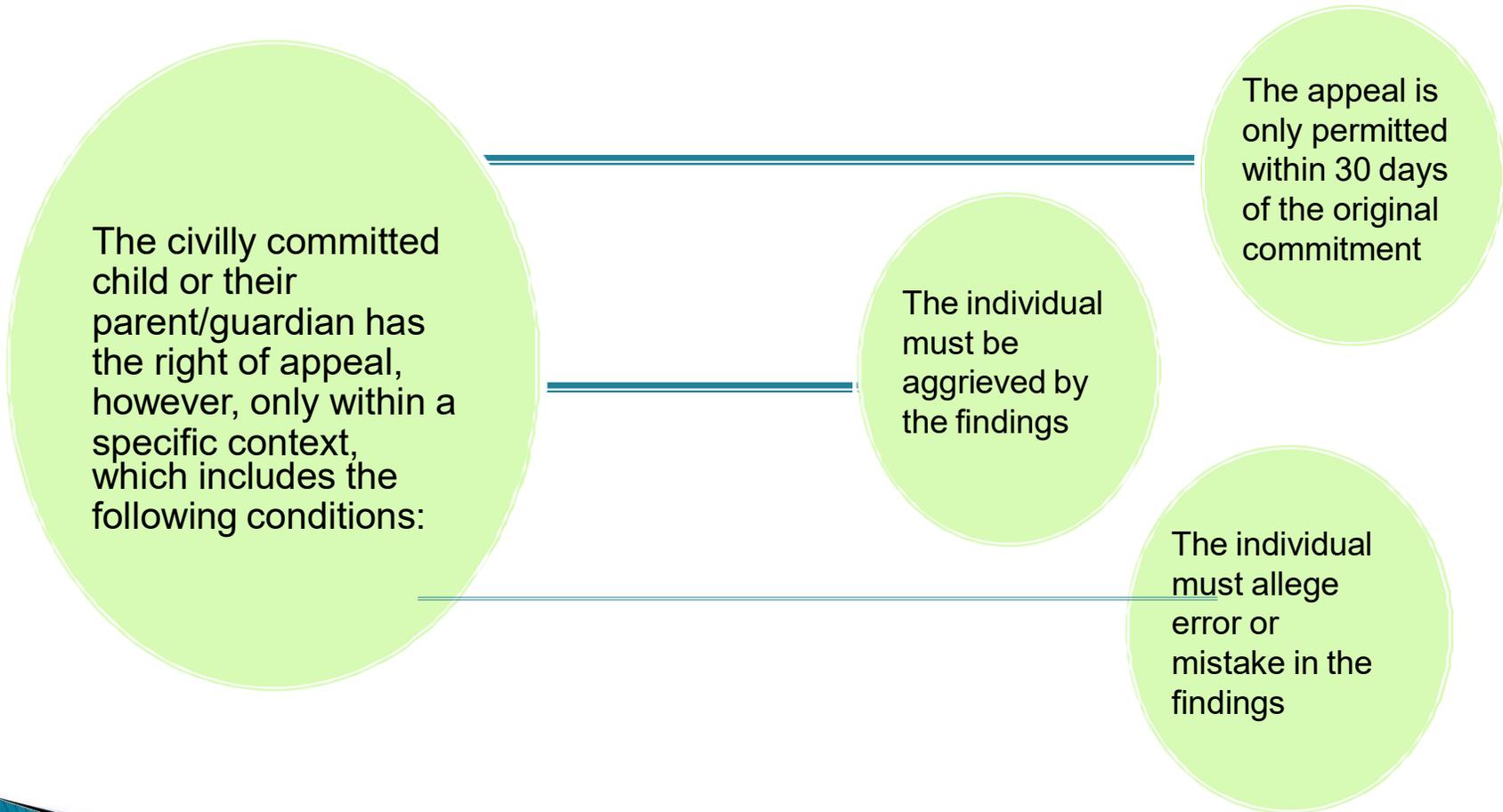
- ▶ A child, parent or legal guardian may appeal a commitment order to the Juvenile Court

62A-15-703 (10)(a)

- ▶ The Juvenile Court may uphold or dismiss the commitment of a child, upon appeal of the original commitment proceeding



Right To Appeal



Discharging Against Medical Advice

- ▶ If the parent/guardian with legal custody or the state agency with guardianship of a child chooses to remove a child from a residential or inpatient setting against medical advice (AMA), the LMHA is encouraged to meet with the parent/guardian, attempt to understand their concerns, and explain the possible consequences if the child is removed AMA. If the parent/guardian still wishes to proceed then the LMHA should:
 - Complete a ***Discharge From Commitment to the LMHA of a Child*** Form
 - Document the discussion and invite the parents/guardians to sign
 - Provide the parent/guardian with a list of resources such as crisis line number, location of nearest hospital in area, and inform them that they can take the child there if needed

Notice of Discharge From Commitment to the Local Mental Health Authority of a Child (*Form 0067*)

- ▶ LMHA uses form to discharge a child from commitment
 - 1 Page Form
 - Please Refer to Forms Packet
 - Discussion

STATE OF UTAH
NOTICE OF DISCHARGE OF CHILD FROM COMMITMENT

Local Mental Health Authority

IN THE MATTER OF:

Child

The reasons justifying the commitment of physical custody to _____
Local Mental Health Authority

of the above-named child no longer exist and the child is discharged from commitment.

Dated this _____ day of _____, 20_____.

Clinical Director or Designee

Local Mental Health Authority

Address

UCA 62A-15-703(13) "Each local mental health authority or its designee, in conjunction with the child's current treatment mental health professional shall discharge any child, who, in the opinion of that local authority, or its designee, with the child's current treatment mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120*. The local mental health authority shall assure that any further supportive services required to meet the child's need upon release will be provided."

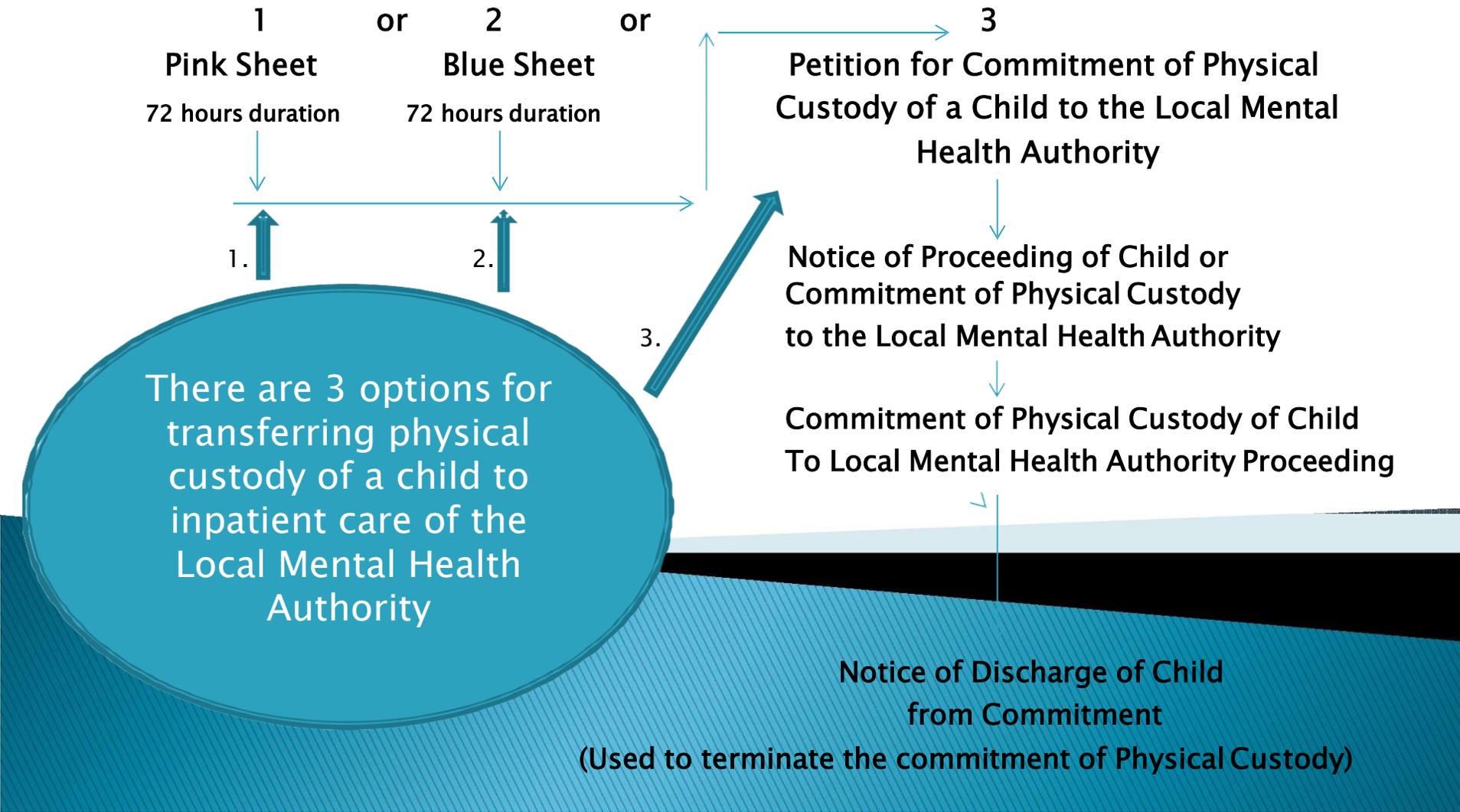
*78A-6-120(6) "When a child has been committed by the court to the physical custody of a local mental health authority or its designee or to the Utah State Developmental Center, the local mental health authority or its designee or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge, release, or parole the child not fewer than five days prior to the discharge, release or parole."

Discharging from Commitment

- ▶ When a child under commitment is to be released from a residential or inpatient setting, the LMHA needs to discharge the child from commitment
- ▶ This is done by completing Form 0067 (Notice of Discharge from Commitment of Child to Local Mental Health Authority)
- ▶ Since commitment is for physical custody, the LMHA needs to relinquish these duties and responsibilities :
 - Placement of a child in any residential or inpatient setting;
 - The right to physical custody of a child;
 - The right and duty to protect the child; **and**
 - The duty to provide, or insure that the child is provided with adequate food, clothing, shelter, and ordinary medical care

Child Commitment Flow Chart

Methods to transfer physical custody of a minor to care of the Local Mental Health Authority

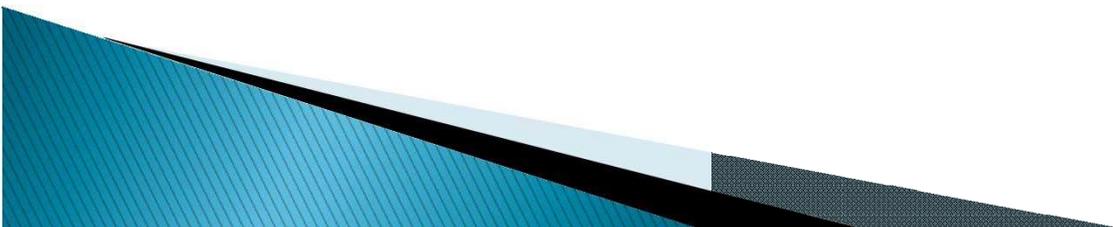


Designated Examiner Certification Training

6. Case Examples

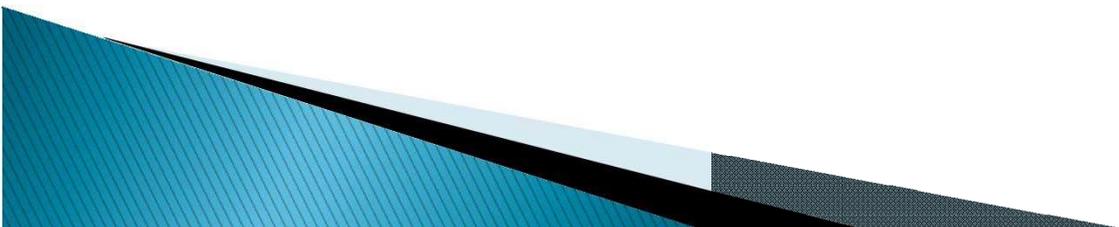
Case Example 1 - Child

- ▶ A child is admitted to an inpatient unit on a Pink or Blue Sheet in cooperation with the parents
- ▶ It appears the child will be in the inpatient unit longer than 72 hours



Case Example 1 - Child

- ▶ What should you do?
- ▶ What additional legal options besides the Pink or Blue sheet should be considered?
- ▶ Who should you notify about this?



Case Example 1 – Child

- The commitment proceeding DE (NDFF) process should be initiated before the 72 hours expires
- The best scenario is that the inpatient unit staff has worked with the parents and informed them that they would need to conduct a commitment proceeding, DE (NDFF) since the child is going to be in the inpatient unit longer
- Informal process (could all be done on different days or times based on the time frame before the Pink or Blue expires)

- LMHA assigns a DE (NDFF) and gives the application to the him/her to start the process
- An application for the commitment proceeding process is filled out by the DE (NDFF), with the cooperation of LMHA
- The DE (NDFF) can talk with the parents to make sure they are on board
- DE (NDFF) reads through the chart or documents from the inpatient unit
- DE (NDFF) talks with the child and explains the process
- DE (NDFF) may talk to inpatient unit staff to obtain information
- DE (NDFF) makes a ruling based on the above information

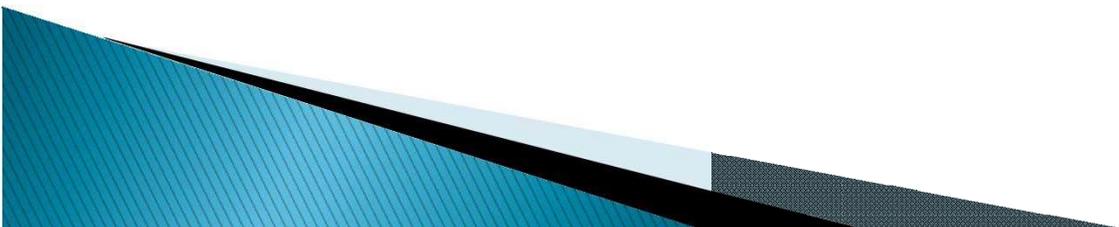


Case Example 2 - Adult

- John has been treated at a community mental health outpatient clinic for several years with a diagnosis of schizophrenia
 - After initial problems with medication compliance, John has been fairly stable and his diagnosis has been changed to schizophrenia, residual
 - Treatment has been progressing so well in fact, that John is seen only every 8 weeks. During one appointment, the clinician notices that John seems to be more symptomatic than usual
 - As the clinician assesses him, he/she suspects that he has not been medication compliant. You are asked to consult on the case
 - Your interaction with him focuses on his increased symptoms, and towards the end of the meeting, John reveals that he has, in fact, stopped taking his medications
 - John's court commitment was dropped about 12 months ago, as he has been doing so well
- 

Case Example 2 – Adult

- ▶ How do you work with this situation to assure proper clinical care?
- ▶ How would the situation change, if the court commitment was still in place?
- ▶ What would you do if John were resistant to any further suggestions from you?



Case Example 3 – Adult

- ▶ 85 yr old, white, widowed male, dishonorably discharged veteran. Residing in his own home, in a suburban neighborhood
- ▶ Transported to ER around midnight via EMS and Sheriff deputies, following an incident in which patient allegedly began shooting a firearm at the site of his residence. Alarmed neighbors called 911
- ▶ History upon arrival at Hospital Emergency Room (See attached E.R. notes)



Identifying Information:

85 yr old, white, widowed male, dishonorably discharged veteran

Residing in his own home in a suburban neighborhood

History upon arrival at Hospital Emergency Dept.:

Trans to ED around midnight via EMS and Co Sheriff Deputies following an incident in which pt allegedly began shooting a firearm at the site of his residence. Alarmed neighbors called 911.

Sheriff's SWAT team became involved and upon arriving on the scene, evacuated homes in the surrounding area and attempted to develop a means of communication with this citizen. Pt had no telephone in his residence. He was reported to be very hard of hearing by neighbors and so law enforcement officers were unable to commence any vocal interaction with the occupant who was the sole resident of his home. Officers tried to observe inside of citizen's home which did have some lights on. Eventually it appeared that this man was retiring to his bed so SWAT team members entered his residence after deploying a "flash-bang" distraction device and rushed him while he was in bed physically restraining him and containing any potential threat he might pose to them, himself or any public in the area. Deputies had been informed by neighbors that this man was known to possess a number of firearms inside the home. By means of a thorough search they located a rather large number of rifles, shotguns, handguns and even a military mortar. Deputies confiscated all these weapons and removed them from the premises. Patient was brought to ER by EMS with deputies following behind.

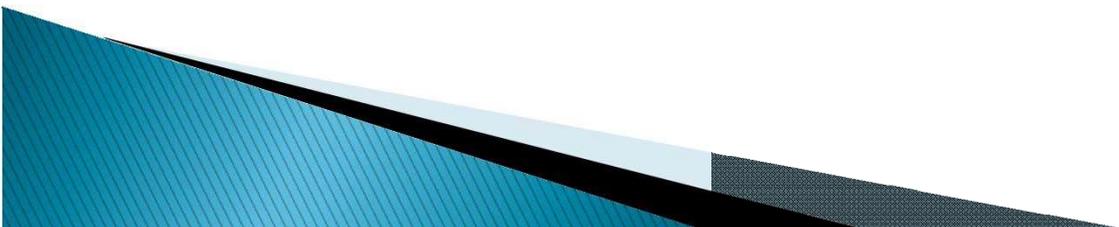
A female neighbor initially reported that she was this man's guardian. She said that they had been neighbors for a number of years. She stated that he did not have any living relatives. She said that he owned the home he lived in and was receiving social security retirement income. She thought he had bank account assets in the neighborhood of \$70,000. His collection of firearms was certainly worth many thousand dollars and that several of his weapons were said to be in "mint" or otherwise very good quality condition and that some might be collector's items which would likely increase in value. This neighbor reported that she had a young adult daughter still residing in her home who was preparing to marry soon and that our patient had prepared a will which named her daughter as the person to inherit his home after his death. Upon quizzing the neighbor about the guardianship, there appeared to be significant uncertainty about just what, if any, legal authority she had and how it had been granted. It was also learned that the patient had served in the US military service in his younger days, but had received a dishonorable discharge and was not known to have had any eligibility for Veteran's benefits.

Law enforcement indicated that the only criminal charge which had been filed was a misdemeanor for unlawful discharge of a firearm within city limits. This was not something which would result in the offender being taken into custody, but he would be given a citation and would need to appear in court in the future. Officers were rather insistent that patient should be retained in the hospital on what they were referring to as a "72-hour-hold."

See next page for the "rest of the story. . ." Suggest that trainees ask what info they want or need to determine the appropriate course of action. Answers may be supplied from what follows:

Case Example 3 - Adult

- ▶ Does he have a mental illness?
- ▶ What is it?
- ▶ Does he meet the 5 criteria for commitment? How do you evaluate?
- ▶ What options do you have to effectively deal with this situation?



After considerable time and effort expended in the process of piecing together the relevant history, it was learned that the patient had never experienced any known history of mental illness nor substance abuse. He had been to a local hospital outpatient clinic earlier that same day and had received an in-dwelling urinary catheter for some genital-urinary problem and had been discharged back to his home with scheduled medical follow-up in the future.

As the evening wore on, patient discovered a very slight issue of blood around the catheter entry point and felt he ought to at least call it to the attention of his neighbors whom he looked to in various times of need. They had a mutually agreed upon signal that he would use to signal need for attention from them--that being to flick his front porch lights on and off a few times. The neighbor apparently did not see this at first. So the patient decided, being the old military man and recreational shooter that he was, to use the international distress signal of firing 3 quick shots in succession. He proceeded to get out his .45 caliber long Colt revolver and place some cartridges in the cylinder. Meantime the neighbor lady had notice his porch light on and walked over to investigate. She could see him sitting in his living room loading his revolver and decided to return home to think through her response to him. Not knowing just what might be on his mind or what he might be experiencing. Next thing she heard were the blasts of the revolver.

Her response was to dial 911 and report shots being fired in the neighborhood.

Meantime, the patient went back into his residence to await the neighbor's response to his distress signal. He was able to very rationally recount later, that when no-one responded, he decided that his initial medical concern didn't seem to be anything of great significance so he prepared to retire to bed for the night--completely unaware that a sheriff's SWAT team was assembling outside his home and pondering how to safely manage this potentially volatile situation that they had little information about.

After finally storming the patient's home and subduing him and being hardly able to talk through just what was going on, because the patient was taken completely by surprise and mobilized a mighty but ultimately ineffective effort to defend himself against the onslaught of these unknown assailants who had burst in upon him in his bedroom, the patient was whisked to the hospital emergency department. Deputies insisted that this man needed to be locked up on the psychiatric unit, because what he had done had obviously put an entire suburban neighborhood at risk and he had mightily resisted them in their intervention efforts and he had a large arsenal of weaponry at his home.

Hospital crisis interveners ultimately pieced together all the correct facts about the entire episode and along with the attending MD, concluded that there was no mental illness, no medical condition warranting hospitalization and an understandably upset citizen who demanded to return to his residence. They had most of the foregoing all confirmed by the presumably caring, concerned neighbor lady who had known and tried to be a helper for the patient for many years.

The ultimate course of action was decided by the crisis supervisor who was called at home about 3:00 am for consultation. It was decided to retain patient in the ED until regular day shift at 8:00 am. Further assessment at that time confirmed the conclusion that patient was not actually mentally ill. Patient had largely resolved his initial anger over what had happened to him and had been reassured that his firearms could be returned to him. Referrals were made to Adult Protective Services and County Division of Aging Services to insure that there was advocacy and protection against any possible exploitation and financial manipulation from the allegedly well-intentioned neighbors. Home health services were arranged for the patient. No further mental health contacts have occurred with this patient since the original assessment.

Case Example 4 - Adult

- A 34-year old Caucasian female, has been referred to you for services about 8 weeks ago
 - She is living alone and has no support system to speak of. Her closest family members live in Idaho, and she got divorced about 2 years ago. She presents with a depressive disorder
 - Her history reveals that she has been hospitalized once at age 17, due to a suicide attempt
 - You have met with her on a weekly basis for the last 8 weeks. Susan has not made any significant progress, even though she was referred to the psychiatrist and she was started on anti-depressants about 6 weeks ago. As you meet her the next time, you notice that she seems more depressed than usual
 - During the conversation, Susan talks about being suicidal. She reports being a 9 on a scale from 1 to 10 (with 10 being the highest). She voices the plan to overdose on medications she has at home
- 

Case Example 4 - Adult

- ▶ How do you work with this situation to facilitate proper clinical care?
- ▶ How would the situation change if Susan is resistant to any crisis intervention?
- ▶ What would you do if Susan got up and left without saying a word when you mention crisis interventions?
- ▶ What would you change assuming her action was/was not related to an Axis II diagnosis?



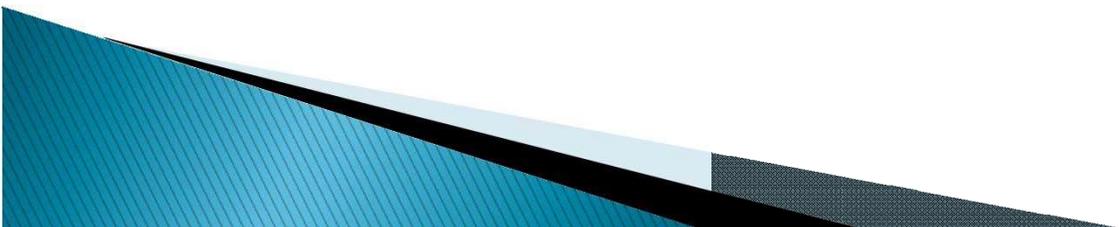
Case Example 5 - Adult

- You have scheduled some time to catch up on paperwork. (Sounds too good to be true, I know!)
- The secretary calls you and asks you to help with a crisis occurring in the waiting room. As you leave your office, you hear some loud commotion in the waiting room
- A client is loudly talking to himself about aliens being after him. The secretarial staff informs you that the client became abusive when she attempted to talk to him
- You also learn that the client thinks he has an appointment to see the physician. As you try to talk to the client, he becomes verbally abusive towards you



Case Example 5 – Adult

- ▶ How would you deal with this situation to facilitate proper clinical care?
- ▶ What legal options might be available in this case?
- ▶ What other information do you need to make a good decision?



Case Example 6 – Adult

- A long-term client diagnosed with schizophrenia, has been on your case-load for about 4 months. He has been in services with the center for most of his adult life, about 15 years. He has been doing well in the community, is able to live independently in an apartment complex.
- You get a phone call from the landlord reporting that neighbors have been complaining about him. Allegedly, he is at home yelling loudly, playing loud music late at night and covering all his windows from the inside with newspapers. Also, the next-door neighbors allege that his apartment is dirty.
- The landlord asks you to “do something” or else he will never work with a client from your center again



Case Example 6 – Adult

- ▶ How would you deal with this situation to facilitate proper clinical care?
- ▶ What options should you consider?
- ▶ What options do you have if he is currently under court commitment?
- ▶ What options do you have if he is not under court commitment?

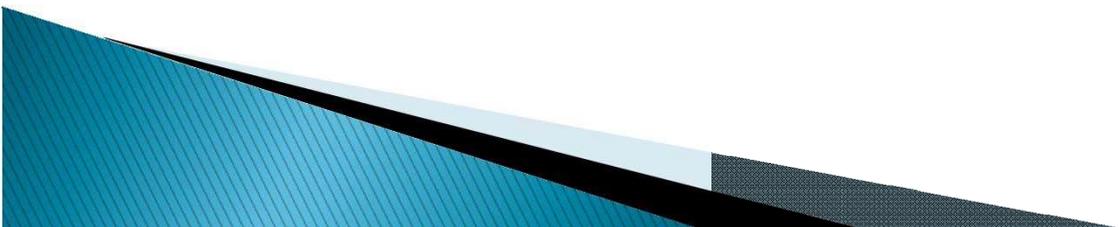


Case Example 7 - Adult

- You receive a phone call from Joan. She has been receiving Case Management services for about 12 months and is doing well.
 - Joan states that her 35- year-old sister-in-law, Susan, is in need of treatment as well. Joan reports that Susan is not willing to come in to the center. She reports Susan is “acting weird and talking to herself loudly.”
 - Susan’s husband, Jason, is frequently out of town on business and is not aware of the situation, since “Susan is able to hold it together when he is around.” Susan does not have any children.
 - Reportedly, Susan is disheveled to some extent, eating poorly, and hearing voices. Joan would like to get Susan into treatment “at any cost, even if it’s involuntary” to help her.
- 

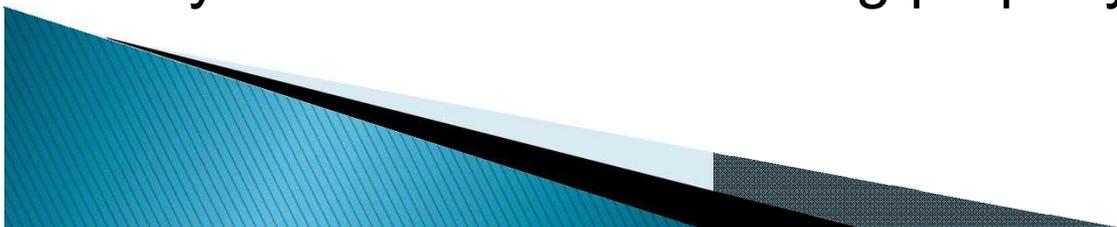
Case Example 7 – Adult

- ▶ What should you do?
- ▶ What legal options are available in this situation?
- ▶ How would the situation change, if at all, if Jason (the husband) would agree that Susan needs help?



Case Example 8 - Adult

- ▶ Three adult children of a 67-year-old widowed woman contact you. They explain that “mom always has been weird, but lately we are getting really concerned.” They report that their mother has always been reclusive, extremely suspicious of strangers, and reported having “visions of God.”
- ▶ The adult children have taken care of their mother and adapted to her peculiarities. For instance, the mother had periods of time where she would not see anybody in person. During those times, the children would leave groceries on the doorstep and watch her take the groceries inside from a distance.
- ▶ For about two weeks now, however, the groceries have not been touched. The children are worried about their mother, as they doubt that she is eating properly.



Case Example 8 – Adult

- ▶ They also wonder about her deteriorating mental state, as she has made numerous references to “seeing and speaking with God” during their recent (and infrequent) telephone conversations.
- ▶ At this time, she is not responding to phone calls (she picks up the phone and hangs up without answering), and won’t answer the door.
- ▶ The children drive by frequently and know that their mother is there because the lights are turned on and off during the day and night.
- ▶ The adult children of this woman have heard about case management services and feel that “you need to help them out.”



Case Example 8 – Adult

- ▶ How would you advise this family?
- ▶ What legal options are available?



Designated Examiner Certification Training

7. Courtroom Witness Tips

Preparation To Be a Good Court Witness

- ▶ Be on time and prepared
- ▶ Be appropriately dressed and groomed
- ▶ Turn off all electronic devices when entering the court room, be attentive to the proceedings
- ▶ Think before you speak
- ▶ Review your notes, examination or other relevant documents



Courtroom Protocol

- ▶ Speak up so that your testimony can be easily heard by all present
- ▶ When addressing the Judge, it is proper to use “Your Honor” and when addressing Attorneys you would use their name Mr.____or Ms.____ or Counselor
- ▶ Wait until an entire question has been asked before answering



Courtroom Protocol

- ▶ When taking the oath, hold your right arm up high with fingers straight and look at the officer administering the oath
- ▶ When the officer finishes the oath, "...So help you God." You say, "I do" or "Yes" in a clear, audible voice, so all in the court room can hear. Do not act timid
- ▶ If the opposing Attorney interrupts you before you have a chance to complete your answer, you should indicate this to the Judge



Demeanor or Acumen

- ▶ Never nod your head to indicate “yes” or “no.” The proceedings are likely being recorded and an audible response needs to be picked up by the recorder
- ▶ Don’t volunteer information (which may ultimately have little relevance, or you may wish you hadn’t elaborated on)
- ▶ Avoid mannerisms of speech. The habit of prefacing your replies with something like, “I can truthfully say” or “To be perfectly honest,” is redundant since you are under oath and may cast doubt on your entire testimony



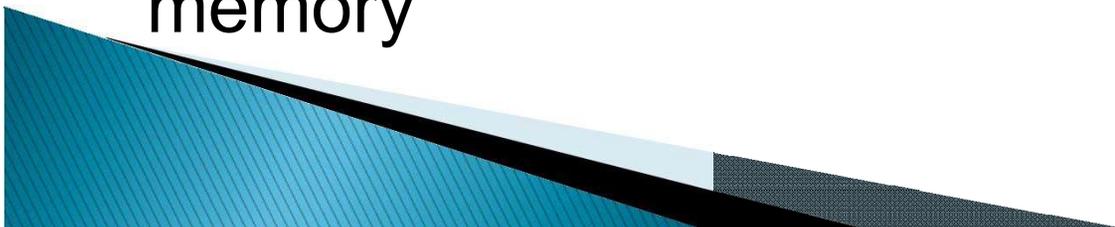
Testifying

- ▶ Use “person first” language
- ▶ In civil commitment hearings, testimony should be “relevant” (focused on the criteria for commitment) and “recent” and generally guided by the facts you have ascertained, which pertain to the particular case at hand, in the here and now
- ▶ Be brief. Give relevant, concise responses to questions
- ▶ Be fair
- ▶ Express yourself using simple, appropriate language that the Judge, Attorney(s) and others in the courtroom can understand



Testifying

- ▶ Don't get caught in snares like this: "Did you ever discuss this with anyone?" (In all probability you did) If asked, name the people - the lawyer, the parties to the application, etc
- ▶ If the lawyer asks you, "Are you as positive about this as the rest of your testimony?" Stop and think. Are you?
- ▶ No editorializing
- ▶ If you make a mistake or a slight contradiction, admit it and correct it. Don't tie yourself in knots trying to cover up some slip of your tongue or memory



Testifying

- ▶ If you can't answer "yes" or "no" then say so. Modify your reply by "Under certain circumstances"
- ▶ If you don't know or can't remember, say so. Those are legitimate answers to the most illegitimate of questions
- ▶ Minimize the use of psychological jargon and define all acronyms
- ▶ Never try to be a "smart aleck" witness. If the lawyer is obviously giving you a chance for a wisecrack, it is best avoided
- ▶ Do not lose your temper. Don't let anyone provoke you into arguments over trivial or important points



Testifying

- ▶ On cross examination, don't look at your Attorney as if to obtain clues as to how to answer
- ▶ Try not to be intimidated by actions or statements from the person whose case is being adjudicated
- ▶ When one of the lawyers calls "Objection" or if the court interrupts, stop your answer immediately and wait until the Judge or Commissioner gives direction
- ▶ During "down" time in the courtroom or during recess, you should not engage in conversation with the Judge or Attorney unless specifically invited to do so in order to get procedural questions answered



Expert Witness vs. Witness to Facts

- ▶ When you are testifying in a civil commitment hearing courtroom as a DE, you are considered an expert witness
- ▶ An eyewitness to an event or have specific knowledge about a situation... witness of fact
- ▶ An expert witness makes judgments or inferences about witness to facts statements
- ▶ If the attorney asks, “Do you want the judge to understand thus & such?” Listen closely to that one. If you don’t want your testimony understood that way, make it clear what you do want them to understand





DESIGNATED EXAMINER CERTIFICATION TRAINING

Updated 8/8/2019

**Assisted Outpatient Treatment
for Mental Illness
Senate Bill 39**

Court-Ordered
AOT

Is a court-ordered process for mental health outpatient treatment

Criteria for Court-Ordered AOT

- 1. The proposed patient has a mental illness;**
- 2. There is no appropriate less-restrictive alternative to a court order for assisted outpatient treatment; and**
- 3. The proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment; or**
- 4. The proposed patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others.**

Early Intervention

Court-Ordered AOT is involuntary court-ordered outpatient treatment that intervenes before the level of dangerousness is met to prevent further patient deterioration, to move the patient into treatment and hopefully onto a faster recovery.

Difference Between Court- Ordered AOT and Civil Commitment

- **The imminent level of substantial danger is not present**
- **Requires only the potential for the patient to deteriorate to that level.**
- **Focuses on history or clinical limitations, rather than current danger.**

Who Can Request AOT?

- **Director of treating agency, organization, facility or hospital**
- **Treating licensed mental health professional**
- **Immediate family members**
- **Adults residing with the individual**
- **Peace officer, parole or probation officer supervising the individual**

DE Responsibilities

When evaluating a proposed patient for court- ordered AOT treatment, the DE shall consider whether:

- **The proposed patient has been under a court order for assisted outpatient treatment;**
- **The proposed patient complied with the terms of the assisted outpatient treatment order, if any; and**
- **Assisted outpatient treatment is sufficient to meet the proposed patient's needs.**

(UCA 62A-15-618)

Form 39-1- Application for Court-Ordered Assisted Outpatient Treatment

Assisted Outpatient Treatment

In the _____ District Court of _____ County,
State of Utah

In the Matter of: _____
Application for Order for
Assisted Outpatient
Treatment

Case No.: _____
County of Residence: _____
Proposed Patient (Full Name) _____
(Social Security Number) _____

_____, being first duly sworn upon oath, deposes and says:

1. That _____, ^{Proposed Patient} Date of Birth _____, now at: _____
is to the best knowledge and belief of the affiant, mentally ill and should be court-ordered
to Assisted Outpatient Treatment with: _____, pursuant to the provisions of Utah
Local Mental Health Authority

Code Annotated 62A-15-630.5.

Such belief is based upon the following facts, to wit: _____

2a.* That the said _____, ^{Proposed patient} has been examined by a licensed
physician or examiner which is attached hereto and by this reference made a part hereof, or
2b.* That the said _____, ^{Proposed patient} has been requested to but has
refused to submit to an examination of mental condition by a licensed physician or person
qualified as a designated examiner.

(*Strike either paragraph 2a or 2b)

Affiant _____
Relationship to Proposed Patient _____
Address _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Officer Authorized to Administer Oath _____

Names and addresses of those to be notified:

Parent(s) or Legal Guardian (adult ward): _____

Adult Family Member(s) _____
Address _____ Phone _____
Relationship to proposed patient _____

Legal Counsel _____
Address _____ Phone _____

Other Person(s) _____
Address _____ Phone _____
Relationship to proposed Patient _____

CERTIFICATE

Upon the application of _____, I, _____
^{Affiant}

a duly licensed physician in the State of Utah or a designated examiner duly appointed by
the Division of Substance Abuse and Mental Health pursuant to UCA 62A-15-602 (2002),
examined: _____, on the _____ day of _____, 20____.

^{Proposed Patient}
which is within a seven day period immediately preceding this certificate, and certify that in
my opinion the said proposed patient is mentally ill and should be court ordered to assisted
outpatient treatment to _____.

Dated this _____ day of _____, 20____.
Local Mental Health Authority

Signature _____
Title _____
Address _____

Instructions: Proceedings for an assisted outpatient treatment court order for an individual who is 18 years of age or older
may be commenced by filing a written application with the district court of the county in which the proposed patient resides
or is found, by a responsible person who has reason to know of the condition of the proposed patient which lead to the belief
that the individual is mentally ill and should be placed on an AOT court order. That application shall be accompanied by (a) a
certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the
certification the physician or designated examiner has examined the individual, and that he is of the opinion that the
individual is mentally ill and should be placed on an AOT court order; or (b) a written statement by the applicant that the
individual has been requested to but has refused to submit to an examination of mental condition by a licensed physician or
designated examiner. The application shall be sworn to under oath and shall state the facts upon which the application is
based. UCA 62A-15-630.5 (2019)

Form 39-10- Initial Findings and Order of Assisted Outpatient Treatment

Assisted Outpatient Treatment

IN THE DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH

IN THE MATTER OF:

Proposed Patient (Full Name)

INITIAL FINDINGS AND
ASSISTED OUTPATIENT TREATMENT

Social Security Number

Date of Birth

Case No: _____

This matter was duly heard on the _____ day of _____, 20_____, and
the Court, pursuant to UCA 62A-15-630.5, having found by clear and convincing evidence
that:

- a. the patient has a mental illness;
- b. the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;
- c. the patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others;
- d. there is no appropriate less-restrictive alternative to a court order for Assisted Outpatient Treatment; and
- e. the local mental health authority can provide the patient with treatment that is adequate and appropriate to his conditions and needs,

NOW THEREFORE, IT IS ORDERED that _____ shall be ordered to Assisted
Outpatient Treatment with _____
Local Mental Health Authority for a temporary period of _____,

which does not exceed six months unless sooner discharged by proper authority.

Recommended this _____ day of _____, 20_____.

Mental Health Commissioner

ORDERED this _____ day of _____, 20_____.

District Court Judge

Form 42- Notice of Discharge From Order for Assisted Outpatient Treatment

NOTICE OF DISCHARGE FROM ORDER FOR ASSISTED OUTPATIENT TREATMENT

Local Mental Health Authority

IN THE MATTER OF:

Patient

Case Number

To the _____ District Court of _____ County, State of Utah:

The reasons justifying the court ordered Assisted Outpatient Treatment of the above-named patient no longer exist and the patient is discharged from court ordered treatment.

Dated this _____ day of _____, 20_____.

Director or Designee

Instructions: Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held. UCA 62A-15-636 (2002)

Review Hearings

Court-ordered AOT has the same six-month review hearing requirement as civil commitment when the patient is not under an order of commitment at the time of the hearing.

Local Mental
Health
Authority (or its
designee)
Services Must
Include

- 1. Case management services**
- 2. Individualized-treatment plan developed in collaboration with the proposed patient, when possible**
- 3. Other treatment and recovery services as described on the treatment plan**

Senate Bill 38: Mental Health Amendments

S.B. 38 (62A-15-626) law states that “a local mental health authority’s inability to locate a committed individual may not be the basis for the individual’s release, unless the court orders the release of the individual after a hearing.”

S.B. 38 (62A-15-632) law states that “except for good cause, a court may not terminate a civil commitment through a review hearing if the patient: (a) is under a conditional release agreement; and (b) does not appear at the review hearing.”

S.B. 38 (62A-15-618) law states that “a designated examiner may request a court order to obtain a proposed patient’s mental health record if a proposed patient refuses to share this information with the designated examiner.”

Senate Bill 39: Assisted Outpatient Treatment for Mental Illness

S.B. 39 (62A-15-630.5) law states that “if the proposed patient refuses to submit to an interview . . . or an examination . . . the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient into the custody of a local mental health authority or in a temporary emergency facility . . . to be detained for the purpose of the examination.”

S.B. 39 (62A-15-631) law states that the applicant, “local mental health authority or its designee, or the physician in charge of the proposed patient’s care shall, at the time of the hearing provide the court with the following information (H) whether the proposed patient has previously been civilly committed or under an order for assisted outpatient treatment.”

Senate Bill 39: Assisted Outpatient Treatment for Mental Illness

S.B. 39 (31A-22-650) law states that “A health insurance provider may not deny an insured the benefits of the insured’s policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.”

S.B. 39 (62A-15-63.4) law states that “A court order for assisted outpatient treatment does not create independent authority to forcibly medicate a patient.



Questions?

Helpful links:

<https://dsamh.utah.gov/pdf/Adult%20MH/Utah%20AOT%20Defined.pdf>

S.B. 38

<https://le.utah.gov/~2019/bills/static/SB0038.html>

S.B. 39

<https://le.utah.gov/~2019/bills/static/SB0039.html>