



North Carolina Board of Licensed Professional Counselors

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NCBLPC Professional Brief

Content Area: Counseling and Involuntary Commitment

Brief Overview/Description:

The North Carolina Magistrates Association states the following regarding "Involuntary Commitment: "The policy of the State is to assist individuals with mental illness, developmental disabilities, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, developmental disabilities, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically most appropriate, and to maximize their quality of life... When a person's illness makes it difficult for him to recognize the need for the structure, safety, and treatment that a hospital can provide, it is up to someone else who cares about the person to seek help and petition for issuance of a court order to have him taken into custody for examination by a qualified physician or eligible psychologist in a process called *involuntary commitment*".

"A magistrate is authorized to issue custody orders for involuntary commitment for a respondent (the person being involuntarily committed) who resides in the magistrate's county or who may be found in that county. Once the petition is approved, it is considered to be a warrant that authorizes a law enforcement officer to take the respondent into custody and transport him to a locally designated facility for evaluation."

"Chapter 122C of the North Carolina General Statutes requires that the respondent be mentally ill and a danger to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness."

Definitions

1. "Dangerous to himself": within the relevant past the respondent has acted in such a way as to show that he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. An individual is dangerous to self if they exhibit behavior that is grossly irrational, out of control, inappropriate to the situation, severely impaired insight and is unable to care for self. Or has attempted suicide, threatened suicide and is a reasonable probability of suicide unless adequate treatment is given. Or has mutilated himself or attempted to mutilate himself and is a reasonable probability of serious self-mutilation unless adequate treatment is given.
2. "Dangerous to others": If within the relevant past, has inflicted, attempted to inflict or threatened to inflict serious bodily harm on another, created a substantial risk of serious bodily harm to another, engaged in extreme destruction of property; and exhibits a reasonable probability that this conduct will be repeated. NCGS 122C-3(11)(B)

Involuntary commitment and court-ordered treatment should only be used as a last resort and only when it is believed to be in the best interests of the individual.

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Points to Consider

1. Petitions may be sworn at the magistrate's or clerk of court's office. Physician or eligible psychologist, it may notarize or fax petitions to the magistrate's office.
2. Petitions that result in the issuance of a custody order are served by local law enforcement. Law enforcement will transport the respondent (person about whom the petition was filed) for evaluation at an approved facility, (e.g., hospital, area mental health).
3. This first evaluation can result in a recommendation for treatment or release, if the evaluator does not feel the person is a danger to themselves or others.
4. If evaluator recommends treatment, the respondent is transported to a secure facility for treatment. If treatment is not available, the respondent can be held at the hospital for up to 7 days, and/or a new petition may be initiated.
5. At the facility, the respondent must be re-evaluated within 24 hours to determine if they still meet inpatient criteria. If so they are kept at the treatment center until a physician determines they are not a danger to self or others.
6. Patients may be committed to outpatient treatment, if failure to seek treatment results in behavior that is dangerous to self or others. The facility provides for treatment may order an evaluation if the respondent does not comply.
7. Patients committed for substance abuse; (danger to self or others) follow similar procedures as for mental illness.

Resources:

The complete text of Chapter 122C of the General Statutes of North Carolina titled Mental Health, Developmental Disabilities, and the Substance Abuse Act of 1985 is available at:

http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_122C.html”

<http://www.aoc.state.nc.us/magistrate/magistrate.htm>

The Patient Self- Determination Act, Omnibus Budget Reconciliation Act of 1990 - OBRA-90, Pub. L. 101-508, 104 Stat. 1388, enacted November 5, 1990.

Key Legal Factors:

Counselors who have evidence that a client is (a) "dangerous to self or others" or "in need of treatment in order to prevent further disability or deterioration" and (b) is also uncooperative with receiving services or following voluntary hospitalization procedures have a duty to petition a magistrate for a court order to have the client picked up and examined by a qualified mental health professional. The professional, a psychiatrist or other licensed physician, will then make the decision to order court-ordered inpatient commitment to an appropriate facility or to release the client. The definition of "dangerousness" is particularly relevant. Counselors should utilize and document every available strategy for dealing with a client's needs and safety before resorting to commitment.

Professional Disclosure Statements should include a description of one's duty when "dangerousness" may be an issue. In cases where the a client's diagnosis suggests the possibility of a future need for involuntary commitment or other possible breaches of confidentiality related to danger to self or others, there should be discussion throughout the counseling relationship about the counselor's responsibility in regard to the safety of the client and others.

If a counselor works in a facility, risk of lawsuits may be minimal.

Real Issues to Consider:

A counselor is in the role of trusted confidant and asking for a commitment order creates a dual role as the counselor then acts as an agent for society. Dual roles with clients can have significant effects on trust and can contribute to resistance in the counseling relationship. Informed consent, through Professional Disclosure Statements and ensuing discussions, are important in reducing the impact of dual roles. Additionally, counselors should directly address the complications and ramifications of the dual roles, and invite clients to express concerns and feelings they may experience.

If hospitalization or commitment has been needed in the past, the counselor might propose an Advance Psychiatric Directive. Psychiatric advance directives (PADs) are relatively new legal instruments, prepared when a person is competent, that may be used to document the person's specific instructions or preferences regarding future mental health treatment in preparation

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for the possibility that the person may lose capacity to make informed decisions or give informed consent to treatment during acute episodes of psychiatric illness.

Catch 22:

As in many ethical dilemmas, the counselor whose legal and ethical duty is to ask for a commitment warrant is faced with breaking confidentiality, and choosing between the rights of the many and the rights of one - the client. All choices between obeying the law and following ethical principles should end with compliance with the law, but the catch is that there is usually no way to do this without damage to the counseling relationship. **In addition to potential damage to the counseling relationship, the professional can be sued for wrongful confinement or for negligent discharge. However, there are also risks for a counselor who petitions for the commitment warrant. Counselors should be familiar with NC laws on commitment, and should carefully document the reasons for any commitment request.** However, the use of an Advance Psychiatric Directive is a promising strategy for avoiding involuntary commitment and the difficulties that having a client involuntarily committed can create in the counseling relationship.

Summary:

Most counselors will eventually face a situation that requires them to initiate involuntary commitment proceedings for a client. This may be an uncommon occurrence, but when involuntary commitment is required, preparation is key. Counselors need to know the laws and definitions that apply to involuntary commitment prior to beginning professional practice. Professional Disclosure Statements that describe counselors' duties to protect and inform in a situation of danger to self or others must be presented to clients at the beginning of the counseling relationship. Other applicable informed consent policies and practices related to potential suicidal or violent clients should be in place prior to initiation of the counseling relationship. Discussions about dual roles and clients' concerns and feelings about those roles should be discussed. Family members or other key collateral persons involved with treatment can also be educated on how and when to initiate involuntary commitment procedures. Advance Psychiatric Directives are written well before the client needs them, when the client is competent and able to make informed health decisions. Finally, counselors should be knowledgeable about standards of practice that apply to clients that may require involuntary commitment, even if they work in facilities where they cannot be held civilly liable for professional decisions.

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