

THE "HOW TO GUIDE" FOR FAMILIES AND TREATMENT CENTERS USING THE MARCHMAN ACT

By Joseph M. Considine, P.A.

In Florida, the Marchman Act is a very effective tool to get the necessary help for those whose loved ones are abusing substances. Unfortunately, it has historically been underutilized by families and treatment professionals. More recently, however, many families who fear for their loved ones' safety are turning more and more to the Marchman Act as a means of securing the substance abuser's admission into treatment. The existence of a court order requiring the individual's residency in a treatment center is compelling and persuasive evidence to the substance abuser that he or she is at, or quickly approaching, the end of the road of their active abuse of substances. If the court order for treatment is violated, it will result in the incarceration of the individual. Hopefully, this will compel them to be compliant with the court order.

The first step in triggering the Marchman Act is to request that the court order an assessment of the substance abuser and to stabilize the individual. This is done by filing a petition with the court in the county where the substance abuser is located. The substance abuser **does not** have to be a resident of Florida. It is enough that the individual is living, even temporarily, in the state. Moreover, the family need **not** be Florida residents either. Many of our clients are out of state families who are able to suggest to their loved one that they visit Florida under the suggestion that they investigate treatment centers or just to enjoy our beaches and weather. Once the individual is in Florida for whatever reason, the family or friend can file the Marchman Act papers and the Court can enter an order.

It is not difficult to obtain such an assessment order. There has to be a "good faith" reason to believe that the person is substance abuse impaired or has a co-occurring mental health disorder and because of the impairment or disorder:

- 1- The person lost the power of self-control with respect to substance abuse; and
- 2- a.) The person needs substance abuse services because his judgment has been so impaired that he is incapable of appreciating his need for such services and of making a rational decision about services; or
b.) Without help, will the person likely suffer from neglect or refusal to care for himself which poses a real threat of substantial harm.

For most people who have been abusing substances for any length of time, the above criteria is not that difficult to establish to the Court in order to obtain an order for the assessment and detox.

The family or friend who files the petition must locate a facility which can do the assessment and detox the individual, if needed. It is up to the family or the addicted individual to pay for the services. There are many, very good facilities in South Florida available for these purposes which accept insurance. Typically, the court orders a five day stay in the facility for the assessment although that time can be extended by the filing of the petition for involuntary services. The assessment has to be done by a "qualified professional" which is defined as a physician; a physician's assistant; a professional-licensed under Chapter 490 or 491 (i.e. a LHMC or LCSW); ARNP; or a person who is certified through a DCF recognized certification process for substance abuse treatment services and who holds at least a bachelor's degree. The last category includes a CAP with a college degree in any area. The assessment report must be reviewed and signed off by a physician.

The next step in the process is the filing of a petition for involuntary services (treatment). The same criteria of the assessment proceeding must be met although now there is a higher burden of proof required to persuade the court to order involuntary services. The family or friend must show the Court by clear and convincing evidence that the person needs treatment services. Services, by

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the way, are not limited to residential treatment but can include various modalities of services including intensive outpatient or outpatient treatment.

At the involuntary services hearing, the Court will hear the testimony of the family or friend and the qualified professional about the assessment. The family or friend will tell the court about what they have personally observed about the substance abuser including behavior, demeanor and hygiene, evidence of paraphernalia, arrests and past treatment history. Many times, the addict/alcoholic admits to the family at some point that he knows he has a substance abuse problem and cannot stop. This is very good evidence. The mental health professional/qualified professional will testify as to the recommendations for treatment. The testimony of the treatment professional is given great weight by the Court and is usually persuasive.

We receive emails and telephone calls from treatment centers and detox units about who they should send to court to testify at Marchman Act proceedings. We also hear from facilities that do not want their personnel to testify either due to a HIPPA concern or, their qualified professional has never testified in court and does not feel comfortable giving testimony. The testimony of the qualified professional is permitted by the Court as to the recommendation for treatment. The

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mental health professionals should have their concerns allayed by the fact that the qualified professional is the only expert in the courtroom; is the only expert who has assessed the individual; and even though lawyers think they know everything, the mental health professional is much more knowledgeable in this instance.

Occasionally, families fear the resulting anger which may come from the substance abuser as a result of filing a Marchman Act case. I was very impressed by the comments of a client, the words of a father, who filed the case notwithstanding that his daughter would be very angry with him. He remarked to me: “I want to know that if her substance abuse kills her, I did everything possible for her to get her help.”

Finally, the Marchman Act proceedings are confidential by law and the contents of the filing are confidential and protected from disclosure both under HIPPA laws and the Marchman Act itself.

Joe Considine has practiced law in South Florida since 1983. His practice is limited to family law and addiction related law including the Marchman Act. Joe has handled over 1500 litigation cases in his career, appearing in courts throughout Florida.

Joe works extensively with families whose loved ones have substance abuse and mental health problems as an attorney. He lectures throughout Florida on family law matters including the Marchman Act and other substance abuse related issues.

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