Emergency Certificates

[This is the fifth in a series of articles about Louisiana law as it relates to certain mental health concerns]

Louisiana law (R.S. 28:53) offers provisions for admission to a psychiatric or substance abuse treatment facility when the circumstance involves an “emergency”. While the word “emergency” is not defined, other operative terms are outlined (R.S. 28:2):

- "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.
- "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.
- "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.
- Mentally ill person" means any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not refer to a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.
- "Minor" means a person under eighteen years of age.
- "Parent" means a person who is the biological mother or father of an individual or the legally adoptive mother or father of an individual.
- "Patient" means any person detained and taken care of as a mentally ill person or person suffering from substance abuse.

Of course, there are other kinds of admissions to such facilities, including the following

- Informal voluntary admission [R.S. 28:52.1]
- Formal Voluntary admission [R.S. 28:52.2]
- Noncontested admission [R.S. 28:52.3]
- Admission by relative [R.S. 28:52.4]

In R.S. 28:53 an admission by emergency certificate is outlined. It notes that a mentally ill person, or someone suffering from substance abuse, may be admitted and detained for observation, diagnosis, and treatment for a period not to exceed fifteen days under and emergency certificate. If the emergency certificate involves a per-
son suffering from substance abuse, the individual may be detained for one addi-
tional period, not to exceed 15 days, but a second emergency certificate must be ex-
ecuted. This can only happen if a physician at the treatment facility, and another
physician, have examined the person within 72 hours before the termination of the
initial 15 day period and the person remains dangerous and/or gravely disabled,
and that the condition is likely to improve during the extended period.

The law states (in section B.(1) that “any physician, psychiatric mental health nurse
practitioner, or psychologist” may execute an emergency certificate, but only “after
an actual examination of a person alleged to be mentally ill or suffering from sub-
stance abuse who is determined to be in need of immediate care and treatment be-
cause the examining physician, psychiatric mental health nurse practitioner, or psy-
chologist determines the person to be dangerous to self or others, or to be gravely dis-
abled.”

A new provision indicates that the “actual examination” by a psychiatrist may be
conducted by telemedicine, provided that a licensed health care professional who
can assist with obtaining information shall be in the examination room with the pa-
tient at the time of the video conference. “Failure to conduct an examination prior to
the execution of the certificate will be evidence of gross negligence.” Note that the
word “actual” is not defined, but the law seems to clearly imply, especially with the
addition of this new provision, that the intent is that this be a “face-to-face” inter-
view [author’s opinion].

The certificate must contain certain specific information. That information includes:

- The date of the examination
  - This cannot be more than 72 hours before the date of the signature of
    the certificate
- The objective findings of the professional executing the emergency certificate
  relative to the physical or mental condition leading to the conclusion of dan-
  ger or grave disability that is a result of substance abuse or mental illness.
- The history of the case (if known)
- The determination of whether the person is in need of immediate care and
treatment in a treatment facility because the patient is either:
  - Dangerous to himself
  - Dangerous to others
  - Gravely disabled
- The person must be unwilling or unable to seek voluntary admission

The certificate must be dated and executed under the penalty of perjury, but it does
not need to be notarized. The certificate is valid for 72 hours, and shall be delivered
to the director of the treatment facility where the person is to be further evaluated
and treated. IF the emergency certificate involved an examination conducted by tel-
emedicine, the licensed health care professional who was present during the examination shall be responsible for obtaining, recording, and attaching to the emergency certificate the following information about the video conference:

- The date
- The starting and ending times
- The names of all persons who were in the room and the type of license issued to the health care professional
- The physical address of both the examining psychiatrist and the patient when the conference was conducted.

Before or during confinement, any person or his/her attorney has the right to demand a judicial hearing to determine if probable causes exists for continued confinement under an emergency certificate. This hearing must be held within 5 days of the filing of the petition, filed in the court of jurisdiction where the person is confined. Until the court decides, the patient “shall remain confined”, unless the court orders release or some other less restrictive status. The attorney is allowed to review the medical record, and portions of the record may be copied and given to the attorney – these copies must be returned to the treatment facility.

It is important to note that an emergency certificate constitutes “legal authority to transport a patient to a treatment facility”. In other words, the emergency certificate is sufficient to provide law enforcement personnel or ambulance services to transport the patient to a hospital or other treatment facility. Further, the emergency certificate constitutes legal authority to return the patient to the facility if he/she is absent with or without permission during the authorized period of detention.

Within 72-hours of admission, the person must be independently examined by the coroner or his deputy, who shall execute an emergency certificate as well. This is necessary if involuntary commitment is to be continued. If a coroner executed the initial examination, a second examination by any physician at the treatment facility within 72 hours must be completed.

Every person admitted by an emergency certificate must be informed, in writing at the time of his admission, of the procedures required to request release from the treatment facility, the availability of counsel, information about the mental health advocacy service, his/her rights, and the rules and regulations while a patient at the treatment facility. Patients admitted by emergency certificate may receive medication and treatment without their consent, but no major surgical procedure or electroshock therapy can be performed without consent of the court. If the patient objects to medication, the treating physician must make a reasonable effort to consult with the primary physician outside of the facility who has previously treated the patient. This must be documented appropriately.
In the case of a “psychiatric or behavioral emergency” medication can be administered against the patient’s will and without consultation with the primary physician, but the primary physician must be consulted no more than 48 hours after the emergency administration of medication has begun (extended an additional 24 hours on weekends). Again, this needs to be properly documented. A “psychiatric or behavioral emergency” occurs when:

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A \text{ patient, as a result of mental illness, substance abuse, or intoxication engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb.}
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A peace officer may take a person into custody (for no more than 72 hours) and transport him or her to a treatment facility for an evaluation when, as a result of his personal observation, there are reasonable grounds to believe that the person is a proper subject for involuntary admission to a treatment facility because the person is acting in a manner that is dangerous, or suggests grave disability, and is need of immediate hospitalization. The detaining individual is shielded from liability when his/her actions are considered reasonable, assuming the person has been properly trained. In that case, the person may only be transported to one of the following:

- A community mental health center
- A public or private general hospital
- A public or private mental hospital
- A detoxification center
- A substance abuse clinic
- A substance abuse in-patient facility