

# Mental Health Committals – Tennessee

Kezia C. Mills, Esq.

Senior Associate Counsel

Tennessee Department Mental Health Substance Abuse Service (TDMHSAS)

Middle Tennessee Mental Health Institute (MTMHI)



# Agenda

- Probable Cause Hearings
- Judicial Commitment Hearings
- Reporting Requirements for Involuntary Commitments
- Limited Conservatorship Hearings





 $\overline{\text{This Photo}}$  by Unknown Author is licensed under  $\overline{\text{CC BY-ND}}$ 

### Introduction

- Aside from advising MTMHI's administration on a variety of legal matters, I am
  responsible for facilitating all civil commitment matters before the Davidson
  County Courts arising out of MTMHI (including Conservatorship matters),
  meeting certain statutory reporting requirements, overseeing internal
  investigations, responding to external complaints, and representing the Department
  in administrative appeals under the Tennessee Excellence, Accountability, and
  Management Act (TEAM Act).
- This presentation will focus on involuntary committals and limited conservatorship hearings in Tennessee.

# Probable Cause Hearings

PC Hearings – Part 4 Hearings

- T.C.A. § 33-6-401 et seq.
- Emergency Involuntary Admission to Inpatient Treatment



### How are patients admitted?

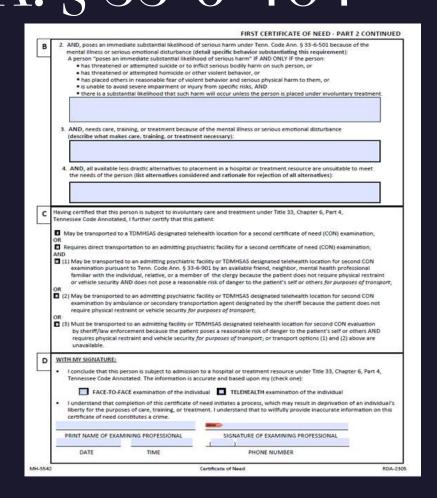
- 1. Each patient admitted must be accompanied by two Certificates of Need ("CONs") signed by mental health professionals. (T.C.A. § 33-6-404)
- 2. One CON is completed by a professional in the community, and the other CON by MTMHI's admitting physician.
- 3. Once the CONs are completed, the admissions department e-files the paperwork to the Davidson County E-filing Portal for the Commissioner's signature.
- 4. Once the Commissioner signs the ex parte order, the patient has been legally admitted under T.C.A. § 33-6-413 and may be detained for 5 business days.

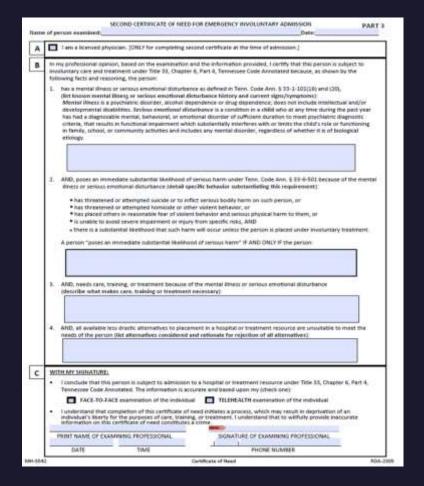
# Certificate of Need (CON) - PC Hearings T.C.A. § 33-6-404



ch Here to RESCIND ultres a new energlastico) Titre	PART 2  REST CENTRICATE OF REED  FOR EMERGETICS SWOULDSTART ADMISSION UNDER STILL 14. CHAPTER 4. PART 4. TEAMESSEE CODE ANNOTATED
ETCHE IN CALABONIC PROPERTY.	of the County of
FRAT HANG OF ELEMENTS P	
State of Termosone, swriffy the	
	MITTAIN OF PRODUCTION OF THE COLUMN C
3475	TOR THE
heck all that apply:	1100 Wille
	partmenn of Mental Realth and Substance Abuse Services (TDMHSAS) Commissioner-designated g agent and, I am a toheok one).
Licensed physician	Licensed psychologist designated as a health sensice provider
lease Consulere the Following:	
Thave completed this car	refricate because a mandatory pre-ocreaning agent was not available within 2 hours.  AND
	overside health cross team in my area and have determined that all invalidate less disords; in it is a hospital or treatment resource are unsufiable to meet the needs of the person as. 4 below.
Lapake with	
	APP NAME TITLE / AGENCY
as a mandatory pre-sone +**QMMP** means a perso- physician with noperflice master's lockel worker w family througher, ruura is counteelor, or if the perso- oredentals; plus mental.	Health Professional (2009), who has been designated by the TSMHTAS Contrassioner arms again."  on who is licensed in the state, if resident for the profession, and who is a polytestrict, in paycologist with health service provides designation, psychological exercises, licensed distributed (2004) and in martial health operature or licensed circles local sorder, residual and with a marter? degree in nating who functions as a psychiatric nature, licensed professional or providing service to service resignets who are children, and if the above extractional health experience with children. "A TOMPISAS Commissioner designated manufactory it have everall health experience with children in order to complete a comfidure of need on.
	on the exemination and the information provided, I certify that this person is subject to inder first 33, Chapter 6, Part 4, Tennessee Code Aministric Security, as shown by the sperson:
(fict known mental illness or Mental illness is a psychiatric developmental disabilities. Si has had a diagnosable menta citeria, that results in function	amorbonal disturbance so defined in Tenn. Code Ann. § 21-1-101()(6) and (20), seriose senotional disturbance history and correct signify-importants), classifies designed designed con a ring depresence, does not moude introduction for cristor investigated disturbance is a condition in a childraftia of any time cluring the past year (i, behavioral, or emotional disorder in afficient historia for many prophetics designation one impositives; which substantially interferes with or limits the child's rate of functioning in activities and includes any mental disorder, regardless of whether it is of biological entology.

# Certificate of Need (CON) – PC Hearings T.C.A. § 33-6-404





# Timing of PC Hearings

- PC Hearings are commitment hearings held for every individual patient who is detained at MTMHI past the 5th business day following their admission date.
- Weekends and holidays are not counted in the five days. (T.C.A. § 33-6-413 and 422)
- For example, if a patient is admitted on Wednesday, January 1, their hearing will be scheduled for Wednesday, January 8, which is five business days following their admission.
  - Exception: If a hearing day falls on a holiday, or a holiday is between the admission date and scheduled hearing date, the court date may move up or down one or two days, depending on how the court chooses to schedule.
  - Exception: Upon agreement of the MTMHI attorney and counsel for the patient, and the Court, a patient's hearing may be continued to a later docket.

# PC Hearings – Commitment Criteria

- T.C.A. § 33-6-403
  - 1. Person has a mental illness or serious emotional disturbance, AND
  - 2. Person poses an immediate substantial likelihood of serious harm, under § 33-6-501, because of the mental illness or serious emotional disturbance, AND
  - 3. Person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND
  - 4. All available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person...

# PC Hearings – Actual Hearing

- The typical procedure for a Probable Cause hearing is routine: Psychiatrist testifies, patient testifies, Judge makes findings. Attorneys are usually allowed to cross examine.
- Hearings are often informal, and rules of procedure are in force but are not always strictly followed (per statute, hearings are to be conducted "in as informal a manner as may be consistent with orderly procedure"—T.C.A. § 33-3-613).
- The patient is appointed an attorney in advance, and attorneys are usually appointed for the week, and that one attorney will represent all the patients on the docket.
- Any patient committed at the Probable Cause level is committed to the hospital for 15 (calendar) days from the date the Order is signed. (T.C.A. § 33-6-422) The statute directs that the patient must be released upon the 15th day "unless a complaint is filed under chapter 6, part 5 of this title, within the fifteen (15) days." *Id.*

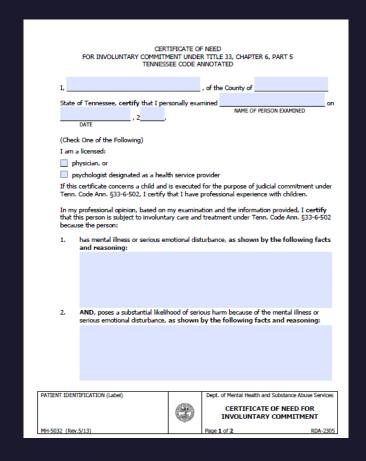
# Judicial Commitment Hearings

JC Hearings – Part 5 Hearings

- T.C.A. § 33-6-501 et seq.
- Nonemergency Involuntary Admission to Inpatient Treatment



# Certificate of Need (CON) - JC Hearings T.C.A. TITLE 33, CHAPTER 6, PART 5



3.	AND, needs care, training, or tre emotional disturbance, as show					
4.	AND, all available less drastic alt resource are unsuitable to meet t facts and reasoning:					
I un	derstand that a person "poses a sub.  A. The person has threatened or a.  B. The person has threatened or a.  C. The person has placed others in them, or  D. The person is unable to avoid in	attempted suicide or to infl attempted homicide or other reasonable fear of violen	ict serious bodily harm er violent behavior, of t behavior and serious	on such person, o		
2.	D. The person is unable to avoid impairment or injury from specific risks. AND There is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment.					
SIGN	IATURE OF EXAMINING PROFESSIONAL	DATE	TIME	a.m./p.m. *		
* Th	ne Number: e date of execution of this certificate must i m to and subscribed before me this	be within three days of the	e examination,			
	day of	2				
13	day of	2				
Not	day of, ary Public commission expires:	2				
Not My	ary Public	Dept. of Me	ntal Health and Substa RTIFICATE OF NI DLUNTARY COM	ED FOR		

# Timing of JC Hearings

- Once a Judicial Complaint for commitment is filed (see § 33-3-602, "contents of complaint for Commitment"), the patient may be held until the hearing date, which must occur no later than 20 days from the filing of the complaint, barring a continuance from the Judge (see § 33-3-606).
- Typically, the hearings are set one to two weeks out from the filing date.
- This is coordinated with the Circuit Court Clerk's office for Davidson County.



# JC Hearings – Commitment Criteria

- T.C.A. § 33-6-502
  - 1. Person has a mental illness or serious emotional disturbance, AND
  - 2. Person poses a substantial likelihood of serious harm because of the mental illness or serious emotional disturbance, AND
  - 3. Person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND
  - 4. All available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person...

# JC Hearings – Actual Hearing

- The typical procedure for a Judicial Commitment hearing is generally the same manner of the PC hearings. In addition to the witnesses from the PC hearing, the social worker also testifies.\*
- Hearings are often informal, but more formal than the PC hearing.
- Any patient committed at the Judicial Commitment level is committed to the hospital indefinitely. (T.C.A. § 33-6-706)
- There is no automatic Court review after the Judicial Commitment hearing.\*\*
- Patients are discharged once the patients' treatment teams determine the patients no longer meet the statutory judicial commitment criteria.

# Reporting Requirements



# Reporting Involuntary Commitments

- T.C.A. § 33-3-117 requires each RMHI to report all individuals to local law enforcement who are "involuntarily committed" to the RMHI under Title 33.
- This report must be made within 3 business days of the commitment.
- Individuals reported as involuntarily committed to local law enforcement are ultimately included on the National Instant Criminal Background Check System (NICS) database at the FBI.
- At MTMHI, these reports are made directly to the Metropolitan Police Department of Nashville.
- The following commitments are included in this report:
  - (1) Probable Cause Commitments, or Commitments made pursuant to T.C.A. § 33-6-422;
  - (2) Judicial Commitments by outside hospitals or agencies pursuant to § 33-6-502;
  - (3) Judicial Commitments as part of a "301(b)" commitment, which is a commitment made by a criminal court for the purposes of ordering a defendant to undergo competency training under T.C.A. § 33-7-301(b).

# Note on Reporting Commitments

- MTMHI does not report the judicial commitments of its own patients, as these patients have already been reported by MTMHI after their probable cause commitment.
- The reason for reporting outside commitments is that occasionally a private hospital or corrections facility will have an individual committed directly to MTMHI under T.C.A. § 33-6-502.
- It often cannot be verified whether such individuals have already been reported under § 33-3-117, so MTMHI reports them as commitments.

# Limited Medical Conservatorship Hearings





Patients committed to MTMHI are not automatically deprived of their right to consent to medications.

### Limited Medical Conservatorships

- In accordance with this provision, the Department promulgated Rule 0940-I-I-.06, "ADMINISTRATION OF MEDICATION TO PATIENTS OR RESIDENTS WHO LACK CAPACITY TO GIVE OR WITHHOLD CONSENT".
- This rule provides that once a patient is determined to lack capacity and a treatment review committee (the "TRC") is established to make medical decisions on their behalf, the committee has 90 days to treat the patient under the authority of the TRC.
- In order to continue to treat the patient after the 90th day under the TRC authority, the Department must file a petition to appoint a conservator over the patient pursuant to T.C.A. § 34-3-101 et seq.

- Accordingly, prior to the 90th day following a patients TRC date, MTMHI legal must file a petition to appoint a limited medical conservator.
- Typically, MTMHI files a petition for a limited medical conservatorship, or for a conservator "over the person" as opposed to over "person and property."

### TRC and LOC

### TREATMENT REVIEW COMMITTEE (TRC)

TCA § 33-6-107(A)

• All inpatient providers of mental health services shall have treatment review committees to make decisions for service recipients who are admitted to inpatient facilities and lack capacity under § 33-3-218 as determined under rules adopted under § 33-3-217 to make decisions for themselves on treatment,...

TCA § 33-6-107(B)

• The treatment review committee shall be composed of at least four (4) members. No one who is a member of a service recipient's treatment team may be a member of the treatment review committee. The treatment review committee should include a licensed physician, a service recipient advocate, and two (2) who are qualified mental health professionals, licensed pharmacists, or clinical chaplains...

### TRC and LOC

### LACK OF CAPACITY

### TCA § 33-3-218

- 1. (A) [IF] a service recipient, due to intellectual disability or mental impairment related to a developmental disability, is unable to make an informed decision about application for admission to a developmental center under § 33-5-301, request discharge under § 33-5-303, or a routine medical, dental, or mental health treatment, OR
- (B) [IF] a service recipient, due to a diagnosed mental illness or serious emotional disorder, is unable to make an informed decision about application to a hospital or inpatient treatment resource under § 33-6-201, requesting discharge under § 33-6-206, inpatient mental health treatment, release of information, or getting information, AND
- 2. the incapacity is shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, or the available alternative procedures,
- THEN
- 3. the person "lacks capacity" under this title for decision about that matter at this time.

### Limited Medical Conservatorships

- Conservatorship hearings usually include the following proof:
  - (a) Testimony of the physician
  - (b) Testimony of the social worker
  - (c) Testimony of the proposed conservator
  - (d) Testimony of the patient/respondent
- The core proof issues in conservatorship hearings are
  - (a) whether the person is "disabled" as defined in T.C.A. § 34-1-101 and in need of a conservator, and
  - (b) whether the proposed conservator is the appropriate person to serve in that capacity.

# List of Documents needed to file for Limited Medical Conservatorships

1	Petition to Appoint Limited Medical Conservator
2	Sworn Medical Examination Report (T.C.A. § 34-3-104)
3	Proposed Order Appointing Guardian ad litem, Attorney ad litem, and setting hearing
4	Consent signed by Proposed Limited Medical Conservator (Fiduciary Oath is needed after the Limited Medical Conservator is appointed.)
5	A screenshot of the results from a search of the TN department of health's Abuse Registry: a registry of persons who have abused, neglected, or misappropriated the property of vulnerable persons, established by title 68, chapter 11, part 10.
6	A screenshot of the results from a search of the national sex offender registry maintained by the United States department of justice.

# Sample Petition for Limited Medical Conservatorship – ComCare, Inc.

### IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE PROBATE DIVISION

JOYCE KOVACS,

CHIEF EXECUTIVE OFFICER,

MIDDLE TENNESSEE MENTAL HEALTH

INSTITUTE,

Petitioner,

Vs.

JOHN DOE,
D.O.B.: 05/03/1968

Respondent,

Respondent,

### PETITION FOR LIMITED CONSERVATORSHIP

Comes the Petitioner Joyce Kovacs, by and through Counsel, and petitions this Honorable

Court to appoint a Conservator for the Respondent pursuant to the provisions of T.C.A. Section

34-3-101, et seq. In support of this petition, the Petitioner would respectfully show to the Court
the following:

- Respondent, JOHN DOE, is 53 years of age, and resides at Middle Tennessee Mental Health Institute (MTMHI), located at 221 Stewarts Ferry Pike, Nashville, TN 37214. The Respondent is a resident of Davidson County.
- The nature of the alleged disability of the Respondent is that he needs supervision, protection, and assistance of the Court by reason of mental illness.
- Petitioner is the Chief Executive Officer of Middle Tennessee Mental Health
   Institute and her only relationship to the Respondent is by reason of her official capacity.

 The proposed conservator is ComCare, Inc., which can be contacted at P.O. Box 1885, Greeneville, Tennessee 37444-1885. A consent form signed by the proposed conservator is attached as Exhibit 1

- The Respondent has no known next of kin
- 6. The Respondent has a diagnosis of Schizoaffective disorder, Bipolar type, Respondent has fixed persecutory and paranoid delusions about his family plotting against him, and his birth parents not being his real parents. Respondent believes his nieces and nephews are his biological children and that he is much older than his actual age. Respondent does not believe he is mentally ill and states he will never take medication when he is discharge. Due to the extent of the Respondent's disability, the Respondent does not have the ability to make informed decisions about medical treatment. For these reasons, the Respondent would benefit from the appointment of a conservator to assist him in these and other medical decisions.
- The rights to be removed from the Respondent and transferred to the conservator should include the following:
  - (a) The right to give, withhold, or withdraw consent and make other informed decisions relative to medical and mental examinations and treatment:
  - The right to make end of life decisions:
  - To consent, withhold, or withdraw consent for the entry of a "do not resuscitate" order or the application of any heroic measures or medical procedures intended solely to sustain life and other medications; and
  - To consent or withhold consent concerning the withholding or withdrawal of artificially provided food, water, or other nourishment or fluids;
  - (c) The right to consent to admission to hospitalization, and to be discharged or transferred to a residential setting, group home, or other facility for additional care and treatment;

# Sample Petition for Limited Medical Conservatorship – ComCare, Inc.

- (d) The right to consent to participate in activities and therapies which are reasonable and necessary for the habilitation of the respondent;
- (e) The power to give, receive, release, or authorize disclosures of confidential information
- The sworm report of the examining physician regarding the Respondent's mental and/or physical condition is submitted with this Petition as Exhibit 2.

### PREMISES CONSIDERED, Petition prays:

- That a guardian ad litem be appointed to accept service of process in this matter for the Respondent and to represent and protect the interests of the Respondent.
  - That an attorney ad litem be appointed to represent the Respondent.
  - That the Court set a time and place for a hearing on this Petition as soon as possible.
- That a conservator be appointed for the Respondent with the powers and duties

outlined in Paragraph 7 above, and that the rights identified in Paragraph 7 be transferred from the

### Respondent to the conservator

- That the requirements for bond and/or accountings be waived.
- 6. For such further relief to which the Court may find the Petitioner entitled.

Respectfully submitted,

KEZIA C. MILLS, BPR # 033672 Attorney for Petitioner Middle Tennessee Mental Health Institute 221 Stewarts Ferry Pike

Nashville, TN 37214 Tel. (615) 902-7543 I swear (or affirm) that I have read the foregoing Petition for Appointment of a Conservator for the Defendant/Respondent and know its contents and that the contents are true except those stated on information and belief and that, as to those matters. I believe them to be true STATE OF TENNESSEE, COUNTY OF DAVIDSON Sworn to and subscribed before me on this the NOTARY PUBLIC My commission expires: Court Clerk

# Medical Report for Conservatorship

Pat	tient Name:			
Ι, _	, a  physician licensed to practice medicine	in Tennesse	e or a psychologist licensed to p	ractice psychology i
Ter	nnessee, do hereby declare that I examined this pa	tient on	_ (date).	
L	Medical History Summary:			
7	Nature and Type of Disability:			
*** ***	— State of the sta			
3.	Specific Reasons for Recommendation of Conserv	atorship:		
	3 <del></del>			
4.	Type and Scope of Conservatorship Needed:			
	3 <del>3</del>			
5.	Other Information:			
	S			
	amining Professional Signature		100	923
	/ Commission Expires:			
PA'	TIENT IDENTIFICATION (Label)		Dept. of Mental Health and Subs	
			CONSERVATOR	



### Consent Form for Conservatorship

I am aware that I am being proposed as the full or limited medical conservator for and hereby consent to serve as conservator if the Court so appoints me. I understand that my presence in court will be required. Relationship to Patient

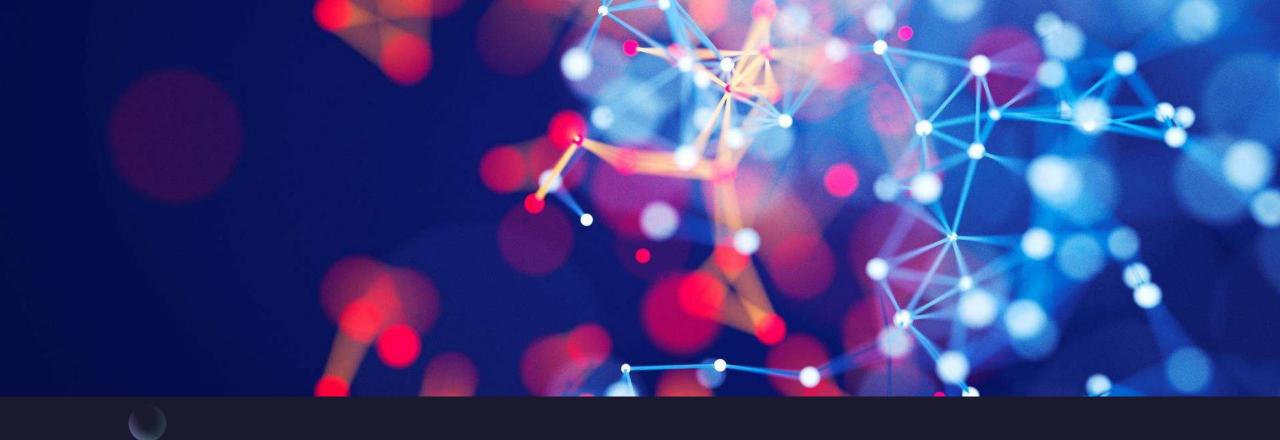


# Fiduciary Oath

In the Circ	cuit Court of Davidson County, Tennessee (Probate Division)
	FIDUCIARY OATH
IN THE MATTER OF:	
	DOCKET NO:
Respondent	500,121,110.
STATE OF TENNESSEE ) COUNTY OF DAVIDSON )	
I,	, do solemnly
swear or affirm that I will h	nonestly and faithfully perform the duties as the Court-appointed
	orther shall honestly and faithfully promise to timely file each required
•	nless waived by this Court, and to spend the assets of the minor or
	as approved by the Court. The inventory must be filed within sixty
	ent date. The Accounting and Status Report are due six (6) months
from the date of my appointm	nent and yearly thereafter;
SO HELP ME GOD.	
Signature of Affiant:	
Address of Affiant:	
Address of Amaric.	
E-Mail and Phone #:	
Sworn to and subscribed before	e me, this day of, 20
	NOTARY PUBLIC / DEPUTY CLERK
My Commission Expires:	
_	_
	Device d SM MA
	Revised 8/1/19

# Note on "Proposed Conservators"

- T.C.A. § 34-3-103 establishes a "priority" of persons to be appointed as conservator over an individual.
- Priority is given first to any person designated in advance by the patient, next to spouse, next to child, next to closest relative, and finally to other willing persons.
- Typically, MTMHI patients do not have any individual designated as their preferred choice, and do not have family members who are able or willing to serve.
- If this is the case, MTMHI utilizes ComCare, Inc., which is a private entity which provides professional guardianship services.
- However, the Court will typically want to know that there are no other options before appointing ComCare.\*



# Questions???

### Thank You!

Kezia C. Mills, Esq.

kezia.c.mills@tn.gov

615.902.7543



