

CLIENT ADVISORY

**SJC ISSUES DECISION ON RIGHT OF AN INVOLUNTARILY
COMMITTED PATIENT TO AN EMERGENCY HEARING**

The Massachusetts Supreme Judicial Court (“SJC”) recently issued a decision concerning a patient’s right to an emergency hearing following a temporary involuntary commitment admission. The decision in *Newton-Wellesley Hospital v. Robert Magrini*, --- N.E.2d ----, 2008 WL 2672680 (Mass.), scrutinized the actions of a hospital which circumvented a court order to discharge a patient admitted on a temporary involuntary commitment. As a result of the decision, health care providers will need to be more conscious of the requisite filing deadlines and due process considerations with regard to petitions for involuntary commitment filed pursuant to M.G.L. c. 123, § 12(b).

Newton-Wellesley involved the temporary involuntary commitment of a patient to Newton-Wellesley Hospital in June of 2006. M.G.L. c. 123, § 12(b) authorizes a “designated” physician to temporarily commit a person by admitting him “immediately after his reception” to a facility “[i]f the physician determines that the failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness.” A temporary admission may only last for three days. By the end of the three days, the statute requires the hospital to (1) discharge the person who had been involuntarily committed; (2) accept the person’s application for a conditional voluntary admission; or (3) file a petition for a continued commitment under M.G.L. c. 123, §§ 7 and 8, which would be valid for a period of either six or twelve months. Prior to the filing of the petition, however, a patient has the right to challenge the § 12(b) admission by requesting an emergency hearing if he or she has reason to believe that such admission is the result of an abuse or misuse of the provisions of the statute. Unless a delay is requested by the patient, the court must hold the emergency hearing on the day the request is filed with the court or not later than the next business day.

At the time of the patient’s initial admission in *Newton-Wellesley*, the hospital failed to timely file a petition for civil commitment. The patient moved to dismiss the petition because it had not been filed within three business days, as required by the statute. The District Court allowed the patient’s motion and ordered him to be discharged. The hospital, rather than discharge the patient, readmitted him under a new Section 12(b) involuntary commitment. The patient filed a request for an emergency hearing which was denied by the District Court. The Massachusetts Court of Appeals issued a split decision affirming the decision of the District Court. The patient then applied to the SJC for appellate review, which was granted.

The SJC vacated the decisions of the District Court and the Appellate Court. In doing so, it dispensed with the issue of mootness by noting that even though the patient had been

discharged long before his appeal, the case presented a matter of public importance capable of repetition.

In its decision, the SJC broadly interpreted the language in § 12(b) granting a patient the right to an emergency hearing where there is reason to believe the admission was the result of an abuse or misuse of § 12(b). The hospital argued that a person is entitled to an emergency hearing only when the patient alleges an abuse or misuse of one of the following specifically enumerated rights set forth in § 12(b): the patient's examination was not conducted by a designated physician; the patient's examination was not conducted in a timely manner; the designated physician failed to apply the correct standard to admit the patient; the hospital did not inform the patient of its obligation to notify the Committee for Public Counsel Services ("CPCS")¹; the hospital did not notify CPCS of the patient's admission; CPCS failed to appoint an attorney for the patient; or the appointed attorney failed to meet with the patient. The SJC, however, held that the emergency hearing provision provides any person admitted with the opportunity to be promptly heard if the admission resulted from any abuse or misuse of a § 12(b) admission. The Court stated that its interpretation is consistent with the intent of the Legislature to extend further procedural protections to persons who, by virtue of their temporary involuntary commitment, experience a "massive curtailment" of their liberty.

The hospital also argued that under the emergency hearing provision of the statute, when a person has sufficiently demonstrated a basis for a hearing, such hearing is merely directory and not mandatory. However, the SJC held that the significant liberty interests at stake, as well as the Court's previous interpretations of the term "shall", import a mandatory or imperative obligation, and unless a request for an emergency hearing is patently frivolous, the obligation to hold an emergency hearing is mandatory. The Court found that the patient in *Newton-Wellesley* had unquestionably demonstrated a proper basis for abuse or misuse to warrant an emergency hearing, pointing to the hospital's failure to comply with the order to discharge the patient by using the second § 12(b) admission to circumvent that order.

Following the decision in *Newton-Wellesley v. Magrini*, it is clear that health care providers need to be more cognizant of the filing deadlines and due process considerations of petitions for involuntary commitment filed pursuant to M.G.L. c. 123, § 12(b). Additionally, it is likely that CPCS will be more aggressive in requesting emergency hearings with regard to § 12(b) admissions.

If you should have any questions or concerns regarding involuntary mental health commitments, please do not hesitate to contact any of the attorneys at The Rogers Law Firm.

¹ The Committee for Public Counsel Services ("CPCS") is a 15-member body appointed by the Supreme Judicial Court to oversee the provision of legal representation to indigent persons in criminal and civil court cases and administrative proceedings in which there is a right to counsel. CPCS appoints counsel for patients in involuntary commitment proceedings.

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