
Testifying for Commitment of Patients with Psychiatric Disorders

Last updated March 2024

Introduction: Patients often arrive at psychiatric hospitals under involuntary commitment orders, typically initiated by police or psychiatric mobile response teams. Short holds (eg 72 hours) don't get a judicial review, but if you extend the hold, you'll need to provide testimony to a hearing officer or judge. Here are some strategies for providing legal testimony. Procedures vary across jurisdictions, but the overarching goal is to balance individual safety and rights with preventing undue deprivation of liberty.

Key Points in Testifying:

- Your primary role is to act as a fact witness, providing evidence on the patient's condition and the need for involuntary commitment.
- Base your testimony on your direct observations and clinical judgment. Third party information, like nursing observations or family reports, might be considered "hearsay" and therefore inadmissible.
- Offer concrete examples of the patient's behavior or statements that demonstrate a significant risk to themselves or others. Don't just vaguely say the patient is suicidal. Mention the specific threats they've made, for example to overdose on pills or jump off a bridge.
- The legal system is designed to be adversarial. Expect your diagnostic conclusions and treatment decisions to be scrutinized and questioned. Maintain composure during cross-examination.
- There's no standardized definition for 'imminent harm' or "imminent risk" and those terms are subject to interpretation based on state statutes, case law, and individual judges. Familiarize yourself with how these terms are typically interpreted in your jurisdiction.

Understanding Commitment Hearings:

- Hearings involve you, the patient, a hearing officer (eg., a judge), and the patients' rights advocate and/or a lawyer who represents the patient's interests. In some areas, an attorney will also be present to represent the hospital. Legal representation is mandatory in some places while in others it's provided upon request. Some jurisdictions allow the inclusion of witnesses, like family members. Patients may choose not to contest their holds and might not attend, but the hearing will still proceed as scheduled.
- Hearings typically take place in the hospital or via teleconference.
- The structure of hearings varies depending on the jurisdiction. As you gain experience in your hospital you will become familiar with the process local to your institution. If your hearings involve an attorney who represents the hospital, meet with them ahead of time to prep. Typical hearings will include some variation of the following:
 - You will be sworn in
 - Your credentials as an expert will be stipulated and the opposing attorney may or may not question you about them
 - You will be asked to read the legal hold documents and explain why the patient poses an imminent risk to themselves or others or cannot provide for their basic needs.
 - The attorney representing the hospital may ask you a bunch of pre-arranged questions that you should be prepared to answer, such as: the patient's diagnosis; what is the reason that you have arrived at the diagnosis; the circumstances of admission; is the patient a harm to self or others; what has the patient done to lead you to believe there is an imminent risk; is there any safe and less restrictive alternative to inpatient admission.
 - Following your testimony, the patients' rights advocate or lawyer will typically challenge your claims and might argue that the patient is safe to be discharged and has a reasonable plan for self-care.
 - Finally, the patient will have an opportunity to speak.
 - The hearing officer will then decide whether to continue the hold, though they may not make the decision right away and may keep you and the patient waiting for a day or two, depending on the judge.
- In some states, if the hold is kept in place, patients have the right to appeal the decision through habeas corpus. There is usually a timeline, e.g. 2 business days, for this second hearing. Appeal hearings tend to be more formal

and take place in a courtroom. You'll be cross-examined by attorneys, including a public defender representing the patient and a district attorney supporting the hold, and a judge will preside over the hearing and make the final decision.

Post-discharge preparedness:

- If the hearing officer or judge decides that the patient does not meet criteria for involuntary hospitalization due to a psychiatric disorder, you'll need to discharge the patient promptly, often within an hour of the decision. Be prepared for this possibility, e.g. by having discharge medications already ordered.
- If you believe the patient would benefit from remaining in the hospital even though the hearing officer or judge has discontinued the hold, consider proposing a voluntary admission. Should the patient decline, ensure a solid discharge plan is in place.