

THE LEGAL CORNER

WILL USING THE MARCHMAN ACT HELP THE SUBSTANCE IMPAIRED ?

By Joe Considine, Esq.

In Florida, the Marchman Act is a very effective tool to get necessary help for those who are suffering from substance use disorders or impairment. Other states have laws which provide for a form of involuntary commitment for substance impaired individuals; however, Florida is alone in providing for involuntary commitment for a lengthy time. The good news is- if you do reside out of state, and desire to file a Marchman Act, the individual need not be a resident of Florida to be subject to the Marchman Act. It is enough that the individual is located, however temporarily, in Florida. 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.

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The Marchman Act has historically been underutilized by families and treatment professionals. There has been reluctance on the part of well-meaning treatment professionals and families to use the courts to compel a substance impaired person to go to treatment. There are two reasons for the reluctance to use this valuable tool. First, there is a lack of understanding of how the Marchman Act works. Second, many well intentioned individuals still cling to the mistaken notion that people only get clean and sober when they really want to do so. The reasoning then goes on to suggest that why should the family use vital resources in securing a court order for treatment if the individual doesn't want help. I had this conversation with a very capable and compassionate doctor at a local hospital in the last month concerning whether a hospitalized patient who is a chronic alcohol abuser should be the subject of a Marchman Act. The doctor asked in good faith: "The Marchman Act does not really work, does it?" That thinking is simply incorrect according to several prominent studies done in the last two decades by well credentialed experts in the field of addiction. Those studies find that compulsory treatment including court ordered treatment is at least as effective, if not more effective, than voluntary treatment. See studies by UCLA and the National Institute of Mental Health in the 1990s and later studies which were published in the American Journal of Addictions (Use of Coercion in Addiction Treatment, January-February 2008). Please feel free to email my office for a copy of these studies.

Former Surgeon General Vivek Murthy and countless mental health professionals tell us that addiction is a disease of the brain. The addict's dopamine receptors are so highly and persistently stimulated by the use of substances that they stunt the executive decision making function of the prefrontal cortex (the part that tells the addict to stop using). It takes months to heal the brain. The Marchman Act allows family members or friends to obtain court orders which can keep the addicted loved one in a structured environment for up to nine (9) months. The objective is that while in a safe and caring treatment facility for a lengthy period of time, the former abuser can acquire enough skills coupled with good nutrition, rest, medical attention, to navigate life without returning to



substance abuse. This happens with time. The Marchman Act gives that time to the substance abuser.

In my law practice, I see the effects of court ordered treatment upon individual substance abusers who wanted no part of treatment and had to be compelled to treatment by the court. In many instances, these people know their lives are a mess and they do not like what they are doing to themselves but they could not imagine life without substances - their best friend.

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So how does the Marchman Act work? The first step in triggering the Marchman Act is to request that the court order an assessment of the individual and to stabilize the individual. This is done by filing a petition with the court in the county where the substance abuser is located.

It is not difficult to obtain such an assessment order. There has to be a "good faith" reason to believe 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 are 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 (called the Petitioner) must locate a facility which can do the assessment and detox the individual, if needed. It is up to the family or the substance

impaired individual to pay for treatment services. There are many, very good facilities in South Florida available for these purposes which take 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 Petitioner files 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 Petitioner must show the Court by clear and convincing evidence that the person needs treatment services. Services, by 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 Petitioner, family or friends, and the qualified professional who performed the assessment. These witnesses will tell the court about what they have personally observed about the substance abuser including behavior, demeanor, hygiene, evidence of paraphernalia, arrests and past treatment history. Many times, the addict/alcoholic admits to the family at some point that she/he knows there is 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 frequently given great weight by the Court and is mostly persuasive.

Our firm is asked by treatment facilities who they should send to court to testify at Marchman Act proceedings or that they do not want their personnel to testify either due to a HIPPA concern or because the clinician has never testified in court and does not feel comfortable giving testimony. There is no issue that the testimony of the qualified professional who did the assessment is permitted by the Court as to the recommendation for treatment. Mental health professionals should have their concerns allayed by the fact that the qualified professional is the only expert in the courtroom and is the only expert who has assessed the individual.

Sometimes families are concerned about the resulting anger from the substance abuser toward the Petitioner as a result of filing a Marchman Act case. It is important to remember that the family is trying to save the substance impaired individual's life. I was very impressed by the comments of a client, the words of a father, who filed a 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."

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 works extensively with families whose loved ones have substance abuse and mental health problems as an attorney. www.joeconsidinelaw.com

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ONE GIFT

By Hedy McDonald

If I could give you one gift, if I could change one thing,
if I could wish one thing for you it would be love

That you would truly have love for yourself and believe
you are lovable

That you could leave your dark thoughts and destructive
ways behind

That you could believe in yourself, your talent and
your inner and outer beauty

That you could believe in your ability to represent and
lead the way to greater things

Second, I would take away your fear
So that you would not run to the arms of numbing and
into the blanket of chaos and distractions

You would not be afraid of love for fear of rejection and
you would realize your value.

That you are feminine and beautiful inside and out and that
you have the ability to help others, including your daughter

Life needs you

So take a hot bath, go for a long walk

Read a good book and light some candles

Stretch your body and pray to whomever made you and
gave you this life

For it is not in vain no matter how long or short you are
gifted on this earth