

FREQUENTLY ASKED QUESTIONS ABOUT THE MARCHMAN ACT

By Joe Considine, Esq.

Families of individuals with substance use disorders and co-occurring mental health disorders ask many questions about the Marchman Act. The following are frequently asked questions we receive in our office and the responses.

Q- Does the Marchman Act work? I have heard people in recovery programs and on daytime television remark that people do not get clean and sober until they really want to. What's the deal?

A- It was conventional wisdom that "no one gets help until they really want it". But that's simply not true, and in fact, that attitude is dangerous. The science, borne out by numerous studies by highly credentialed experts from prestigious institutions, tells us that court ordered treatment is at least as effective, if not more effective, than voluntary treatment.

It is sometimes referred to as a "nudge from the judge". When there is enough skin in the game, there is a small amount of willingness to listen and the survival instinct kicks in to stay in treatment. Studies of the brain inform us, that when the pleasure centers of the brain (dopamine receptors) stop receiving their feel good (cocaine, alcohol, pot, etc....) chemicals, the executive decision making part of the brain – the part that says do not touch the hot stove - starts to regain some functioning and can listen to the good information being provided in treatment. We know that when individuals with professional licenses (doctors, nurses, airline pilots) are forced into treatment in order to keep their license, there is a much higher degree of success than in the general population. The Marchman Act increases the skin in the game of the substance abuser. **Go to treatment or risk going to jail.**

Q- What if my loved one becomes angry with me for filing a Marchman Act case?

A- This may be the most frequently asked question by concerned family members. My response, to quote a client – a dad, said to his wife and me that if the disease of addiction took his daughter's life, he wanted to know standing by her gravesite that he did everything humanly possible to save her life and "having her not be angry with me does not factor into that equation."

The other important point is to realize that your loved one's brain has been hijacked by the process of addiction and it is the hijacked brain which is angry. There are many instances of court ordered addicted individuals who were at first angry with their loved ones for forcing them into treatment, and later, were grateful their loved ones had the courage to file a Marchman Act case.

Q- If someone is already in treatment, but threatening to leave against staff advice, may a Marchman Act case be filed keeping the person in treatment?

A- The answer is yes. It is important to properly draft the pleadings so as to provide the Court with the necessary facts about the person including how they have endangered themselves in the past and whether there is a pattern of leaving treatment early. A person who initially entered treatment voluntarily, and is now threatening to leave treatment, does not preclude the filing of a Marchman Act case.

Q- As a parent, I am concerned about a future employer, a college or professional board finding out that my child has been ordered to treatment under the Marchman Act. Should I be worried?

A- Marchman Act court records are confidential. All petitions for involuntary assessment and stabilization and all court orders and pleadings are confidential and exempt from the Public Records Act. The public is not allowed access to Marchman Act records or pleadings. Personal identifying information may not be published by the Clerk on a court docket or in a publicly accessible file. There is disclosure permitted but only to limited classes including the parties, their attorneys, guardians of the impaired individual, and the individual's treating health care providers. A person or entity other



than the classes of people mentioned above may gain access to Marchman Act records only upon a showing of "good cause", which is a very difficult standard for one seeking information to meet. In my opinion, it will be exceedingly difficult for a non-party to demonstrate "good cause" to a court so as to allow any of these records to be released. Disclosure of information about treatment and records of treatment is strongly disfavored as a matter of public policy by the courts generally. So, I advise families to rest assured that no one can find out about their loved one being in treatment.

Q- If either I or my loved one with a problem live outside of Florida, can I get my loved one help using the Marchman Act?

A- The answer is yes. Neither you nor the impaired individual needs to be a legal resident of the State of Florida to utilize the Marchman Act. As long as your loved one is physically present, however brief a time in Florida, the Marchman Act can apply. Many times, we file Marchman Act cases on a substance impaired individual who is a resident of another state but who is visiting friends or family or is temporarily present in Florida. Because the Marchman Act allows a family to get long term help for a loved one and most states have no similar law, many interventionists and treatment centers urge families to find a way to get their loved one to Florida whether on a vacation or to visit, and once the impaired individual is physically present in the State of Florida, the Court has jurisdiction over that individual and can order the person into treatment. **Again, there is no legal requirement that the impaired individual be a resident of Florida for the Marchman Act to apply.**

Q- What happens if my loved one leaves treatment even while under a court order?

A- The treatment facility will notify the Court which will then schedule a hearing on an Order To Show Cause. Sometimes, the facility will notify the family or the attorney for the family and the family can file a Motion For Indirect Civil Contempt. In either event, there will be a hearing at which time the person leaving treatment will be called to task for leaving contrary to the Court order. Usually, the individual will be given the option of being allowed to return to treatment after a scolding by the Court or to go to jail. Almost everyone in my experience chooses to go back to treatment. This is the leverage of the Marchman Act and one of the reasons it works. Most people do not want to violate a Court order and risk going to jail. But sometimes, it is just the thing that needs to happen to get their attention that they are killing themselves and they need help.

Q- If I file a Marchman Act proceeding with the Court, can I terminate it if I change my mind or my loved one agrees to stay in treatment? Do I have any say in bringing the case to a close?

A- The family member(s) or friend who files the Marchman Act petition is called the Petitioner. The Petitioner, with some exceptions, controls the action from the perspective that the Petitioner can dismiss the case at almost any time he or she chooses. If there is an outstanding order for treatment or assessment, the court needs to be apprised that the Petitioner wants the case to be

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terminated which is usually done by the Petitioner filing a pleading entitled a Notice of Voluntary Dismissal. Moreover, the way that the Marchman Act action is enforced is usually by some affirmative action of the Petitioner in requesting that the Court do something. The Petitioner can simply refrain from asking the court to take any action. So, the answer is generally that, yes, once an action is started, it can be terminated by the Petitioner. If there is an outstanding order, the Petitioner should appear in Court and explain the reason for terminating the case.

Q- Does the Court make the arrangements for my loved one to go to treatment or do I have to do that? How do I do that?

A- It is up to the family or the friend who files the Marchman Act petition to locate a facility to do the assessment and treatment. We have many excellent, ethical treatment facilities which accept insurance or are private pay facilities. Sadly, there are few publicly funded or assisted facilities. In Palm Beach County, there is Drug Abuse Foundation in Delray Beach. In Broward County, there is Broward Addiction Recovery Center (BARC) but only for Broward residents.

Q- What is the type of evidence that I need to present to the Court to show that my loved one needs help?

A- The best evidence includes when the loved one has admitted to you or other family members that they know there is a problem and they need to stop using substances. Many times, a substance abuser will be remorseful after a bad run and will admit to family members or friends that they really need to stop. Testimony by the person to whom such a statement was made is admissible. Other types of evidence include: eyewitness testimony of seeing the loved one under the influence; DUIs; arrests for possession or other substance related offenses; hospitalizations for overdoses; testimony by the family member or friend who has seen evidence of usage such as empty bottles, needles, drug residue and the like.

If you have questions, feel free to send them to me at our email address: joe@joeconsidinelaw.com.

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
