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By Joe Considine, Esq.

FREQUENTLY ASKED QUESTIONS FROM FAMILIES ABOUT THE MARCHMAN ACT

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In our law practice, we are often asked by families and friends of a substance impaired individual about certain matters with regard to the Marchman Act. These questions arise more than several times and I wanted to address them here.

1. Question: 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?

Answer: 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 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 wanting to terminate the case.

2. Question: Does the Marchman Act work? I have heard people in recovery programs remark that people do not get clean and sober until they really want to. What's the deal?

Answer: It used to be the conventional wisdom that no one gets help until they want it. But that's become an old wives' tale; it is simply not true. There are numerous studies done by highly credentialed experts from prestigious institutions which indicate that court ordered treatment is at least as effective if not more effective than voluntary treatment. We call it a "nudge from the judge". When there is enough skin on the line, there is a small amount of willingness to listen and the survival instinct kicks in to stay in treatment. We know from numerous studies of the brain 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 someone with a professional license (doctors, nurses, airline pilots) is forced into treatment in order to keep their license, they have a high degree of success. The Marchman Act increases the skin in the game of the substance abuser. Go to treatment or go to jail.

3. Question: 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. Is my fear well-founded?

Answer: With the end of the most recent legislative session and the signing of the legislation into law by the governor, the confidentiality of the Marchman Act process is no longer in doubt. The new amendment is Marchman Act, Section 397.6760, which makes it very clear that 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 someone 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 tell my families to rest assured that no one can find out about their loved one being in treatment.

4. Question: 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?

Answer: 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. Notwithstanding the bad press of treatment in South Florida, 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.

5. Question: 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?

Answer: 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 who has a problem 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.

6. Question: How would I get my loved one who is not a resident of Florida subject to the Marchman Act?

Answer: Here's a brief case history to show how it can be done. I represented a family of a young man from North Carolina, an accountant, who was abusing drugs and alcohol. His parents were extremely worried about him. They contacted an intervention specialist who was aware of the Marchman Act and who put them in touch with me. The interventionist helped them locate a Florida treatment center. The parents suggested that their son visit his ailing grandmother in Florida which he agreed to do. The parents provided me with the necessary information ahead of time when their son will be arriving in Florida; the pleadings were prepared and ready to be filed. Once their son landed in Florida, the Marchman Act pleadings were filed, an emergency order was entered, and the son was picked up and taken to treatment where he stayed for sixty (60) days. In another case, the family convinced their out-of-state daughter to vacation for a week in South Beach. Once she was in Miami, she was served with Marchman Act papers and went to treatment.

7. Question: What happens if my loved one leaves treatment even while under a court order?

Answer: 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.

8. Question: What is the type of evidence that I need to be prepared with to present to the Court to show that my loved one needs help?

Answer: The best evidence includes when the loved one has admitted to you or other family members that they know there is a problem and the 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 includes 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.

9. Question: If my loved one is in a treatment facility pursuant to a treatment order, can the patient change treatment facilities?

Answer: If the family and the patient are working collaboratively and want to change the facility, the answer is usually yes. Generally, the court wants the impaired individual to "buy into" the treatment process. Unless there is some compelling reason not to change facilities, the court generally approves a change in facilities.

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

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