

ISSUE DATE:

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May 1, 2012

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SMH-P-12-03

**SUBJECT:**

Proper Implementation of Discharge or Transfer Procedures for Certain Persons in the Category "Acquitted Because of Lack of Criminal Responsibility." (Not Guilty by Reason of Insanity)

**BY:**



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Director Community and Hospital Operations

**SCOPE:**

OMHSAS Executive Staff  
County MH/MR Administrators  
Regional Mental Health Community Program Managers  
Chief Executive Officers, State Mental Hospitals  
Chief Forensic Executives, Regional Forensic Psychiatric Centers (RFPC)  
BSU/SCU Forensic Liaison

**BUSINESS PARTNERS:**

Commonwealth Judges  
District Attorneys  
Public Defenders  
Sheriffs  
County Jail Wardens  
Criminal Justice Advisory Boards

**PURPOSE:**

To ensure all staff at State Mental Hospitals and Regional Forensic Psychiatric Centers (RFPC) are aware of the procedures for discharge or transfer involving patients who are acquitted "because of a lack of criminal responsibility", (commonly referred to as N.G.R.I. or Not Guilty by Reason of Insanity), on charges enumerated in Section 304 (g) (2) of the Mental

**COMMENTS AND QUESTIONS REGARDING THIS POLICY SHOULD BE DIRECTED TO:** Director, Bureau of Community and Hospital Operations, DPW-OMHSAS, P. O. Box 2675, Harrisburg, PA 17105 or phone 717-783-8335.

Health Procedures Act of 1976, as amended, and who were committed to the State Hospital pursuant to 304 (g) (2).

### **BACKGROUND:**

Prior to the enactment of the 1978 amendments to the Mental Health Procedures Act of 1976, a superintendent of a hospital was vested with the authority to discharge a patient who had been committed to the hospital following a finding of Not Guilty by Reason of Insanity, when a determination was reached that a less restrictive setting was indicated. Act 324, amending the Mental Health Procedures Act of 1976, eliminated this discharge authority and requires specific procedures for discharge to be followed with discharge authority vested only in the court which committed the patient.

### **PROCEDURE:**

No person in the class listed below may be discharged, transferred or have change in privilege level without court approval. Whenever a patient in the class of Not Guilty by Reason of Insanity (NGRI) who has been committed pursuant to Section 304(g) (2) of the Mental Health procedures Act of 1976, as amended, is being considered for discharge, the following must occur in compliance with Section 304 (g) (2) and (4) of the Mental Health Procedures Act, as amended.

### **NOTIFICATION FOR PETITION FOR DISCHARGE:**

1. A petition for discharge must be submitted to the court which ordered the involuntary commitment. A form to be utilized for petitioning is attached. (Attachment #1)
2. Notice of such petition must be given to the:
  - a. Patient (prior to hearing),
  - b. Appropriate County Administrator,
    - i. County Administrator of County having criminal jurisdiction, and
    - ii. County Administrator of the County of origin, if different from above, and
  - c. District Attorney.
3. Included with the petition must be a Comprehensive Individualized Treatment and Community Support Plan (CITCSP), (Attachment #2). The intent of the CITCSP is to assure all parties responsible for community care and monitoring of the individual are aware of and in agreement with their respective responsibilities and the patient is also aware of his/her care and monitoring requirements.
4. Following the hearing, the court will make a determination to discharge or order additional involuntary treatment.

### **TRANSFER OF NGRI PATIENTS:**

Section 306 (b) of the Mental Health Procedures Act of 1976, as amended, requires notification to the committing judge and district attorney of a proposed transfer of these patients to other hospitals. Such transfers can then proceed if no objection is received from either the committing judge or the district attorney within 20 days (55 PA Code 5100.9 (g)). The Department of Public Welfare regulations provide that Regional Forensic Psychiatric Centers (RFPC) are considered distinct facilities (55 PA Code 7100.306 (e), 9 PA B. 3473,

October 13, 1979); accordingly, any transfer from a RFPC to the general population of a state hospital must also be made in accordance with these procedures.

Prior to a transfer continuity of care planning must occur with the MH/MR County of residence and receiving facility. Following transfer, it is the responsibility of the receiving hospital to track each NGRI patient to be sure the above procedures are followed prior to discharge.

**CONVERSION TO VOLUNTARY STATUS:**

For NGRI patients no conversion to voluntary status may take place without court approval. It is emphasized that conversion of a patient from involuntary to voluntary status is a discharge from involuntary treatment and therefore is permissible only if approved by the court in compliance with the procedures for discharge.

**REGIONAL COUNSEL:**

Regional counsel is available to DPW facilities representing the commonwealth. The petition must be sent to the Regional Counsel for filing with the appropriate court as well as ongoing legal representation during the legal procedure.

The form "Petition for Discharge" is attached (Attachment #3) which is to be used for processing recommended discharges from the hospital. This form may be duplicated by each state hospital and/or Regional Forensic Psychiatric Center as required.

The following are attachments to this Policy:

**Attachment 1:** Petition for Discharge.

**Attachment 2:** Comprehensive Individualized Treatment and Community Support Plan for an Individual Adjudicated Not Guilty by Reason of Insanity (NGRI).

**Attachment 3:** Petition for Discharge of Patient Acquitted Because of Lack of Criminal Responsibility.

**Attachment 4:** Acronyms and Definitions.

**OBSOLETE BULLETIN:** This Policy obsoletes Mental Health Bulletin 99-81-24 issued May 28, 1981.

A form "Petition for Discharge" is attached which is to be used for processing recommended discharges from the hospital and/or Regional Forensic Psychiatric Center. This form may be duplicated by each hospital as required.

IN RE: : IN THE COURT OF COMMON PLEAS OF  
: \_\_\_\_\_ COUNTY, PENNSYLVANIA  
\_\_\_\_\_  
: NO. \_\_\_\_\_ OF 2 \_\_\_\_\_

PRELIMINARY ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_,

Upon the Petition of \_\_\_\_\_, Superintendent/Administrator  
of \_\_\_\_\_ State Mental Hospital/State Forensic Hospital, pursuant  
to Section 304 (g) (4) of the Mental Health Procedures Act, as amended (50 P.S. 7304 (g) (4)),  
a hearing is set for \_\_\_\_\_, 2\_\_\_\_\_, at \_\_\_\_\_ A.M./P.M.,  
at the \_\_\_\_\_,  
Pennsylvania.

\_\_\_\_\_ is appointed to represent Respondent  
in this matter.

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY

IN RE:

NO. \_\_\_\_\_ OF 2 \_\_\_\_\_

\_\_\_\_\_

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_,  
upon the Petition of \_\_\_\_\_, Superintendent/Administrator  
of \_\_\_\_\_ State Hospital/State Forensic Hospital,  
pursuant to Section 304 (g) (4) of the Mental Health Procedures Act, as amended (50 P.S.  
7304 (g) (4)), and after hearing thereon, the Respondent is found no longer severely mentally  
disabled, as defined in 50 P.S. 7301, and it is hereby ordered that he/she be conditionally  
discharged and released from \_\_\_\_\_ State Hospital/State Forensic  
Hospital forthwith.

\_\_\_\_\_ J.

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, do certify that the foregoing  
Petition for Discharge has been served on this date upon the persons and in the manner  
indicated below.

Service by prepaid first class mail,  
Addressed as follows:

\_\_\_\_\_  
District Attorney

\_\_\_\_\_ County

\_\_\_\_\_ PA \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ County MH/MR Administrator (County of  
Criminal Jurisdiction)

\_\_\_\_\_ PA \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ County MH/MR Administrator (County of Usual Residence, if  
Different from Above)

\_\_\_\_\_ PA \_\_\_\_\_

\_\_\_\_\_  
(Name of Patient)

\_\_\_\_\_ State Hospital/State Forensic Hospital

\_\_\_\_\_ PA \_\_\_\_\_

Date: \_\_\_\_\_

**COMPREHENSIVE INDIVIDUALIZED TREATMENT AND COMMUNITY SUPPORT PLAN  
FOR AN INDIVIDUAL AJUDICATED NOT GUILTY BY REASON OF INSANITY (NGRI)**

Date Plan Submitted: \_\_\_\_\_

To Judge \_\_\_\_\_ in the \_\_\_\_\_ County Court of Common Pleas.

General Conditions:

I, \_\_\_\_\_ understand that I have been found by the Court to be Not Guilty by Reason of Insanity (NGRI) pursuant to Section 304 (g) (2) of the Mental Health Procedures Act of 1976 as amended, and that I am being committed by the Court on an Out-Patient Commitment status. I understand that I will be expected to follow the conditions listed below in order to remain living in the community. I specifically agree:

1. To obey all municipal, state and federal laws.
2. To not to leave the state of Pennsylvania without written permission from the judge who maintains jurisdiction over my case \_\_\_\_\_ in \_\_\_\_\_ County.
3. To live at \_\_\_\_\_ (address) with \_\_\_\_\_ (name, relationship, if applicable). I agree not to change my address/living situation without approval of my Case Manager, \_\_\_\_\_ (name), and Forensic Monitor/designee \_\_\_\_\_ (name).
4. To not own, possess, or have access to firearms or any other illegal weapons.
5. To provide any release of information requested by my treating physician, case manager, Forensic monitor/designee, or other treatment staff concerning my mental health and compliance with the conditions of my Community Support Plan (CSP).
6. To not consume alcoholic beverages.
7. To not use or possess any illegal drugs or prescribed medications unless it has been prescribed by my treating physician.
8. To follow the terms of my treatment plan, whether or not they are specified in the CSP.
9. To complete any necessary forms for payment of services.

10. I understand that, even though I may not have violated any Conditions of my Discharge, I may be re-hospitalized or placed in a crisis stabilization facility if my mental health deteriorates to such a point that hospitalization or placement may or may not result in a formal revocation of my Discharge.

**NOTE: SPECIFIC CONDITIONS MAY BE DESIGNED AND IMPLEMENTED TO MEET INDIVIDUAL NEEDS**

I agree:

1. To meet with \_\_\_\_\_ (Case Manager) at \_\_\_\_\_ (address) \_\_\_\_\_ times per week/month for the purpose of monitoring compliance with the conditions of release. These meetings may include scheduled and/or random home visits and drug screens.
2. To take all medications as prescribed by my treating psychiatrist, Dr. \_\_\_\_\_ at \_\_\_\_\_ (Agency Name). I agree to meet with Dr. \_\_\_\_\_ (Psychiatrist) at \_\_\_\_\_ (address), \_\_\_\_\_ times per week/month for the purpose of monitoring my medication.
3. To cooperate fully with the collection of laboratory specimens including the testing of blood, breath, or urine for alcohol, illicit drugs and therapeutic medication levels. I understand that some of these requests may be random and unscheduled.
4. To attend Alcoholics Anonymous and/or Narcotics Anonymous meetings \_\_\_\_\_ time a week and provide my Case Manager with proof of attendance.
5. To meet with Substance Abuse Counselor \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_ times per week/month.
6. To cooperate with any other special conditions deemed necessary by the mental health staff responsible for my treatment.
7. To cooperate with all requests for Psychological Testing.
8. To make arrangements for my transportation between my home and meetings required by this plan. I understand that missing activities because of a lack of transportation will not be accepted as an excuse.
9. That if I am unable to attend a meeting or session as required by this Discharge Plan, I will provide advance notice by telephoning the person with whom I was scheduled to meet. If I am unable to contact this person, I will call one of the two following individuals:  
Alternate Contact #1: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
  
Alternate Contact #2: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

10. Other Conditions \_\_\_\_\_

**Patient Agreement:**

I have read or had read to me and understand and accept the conditions under which I will be released by the court. I agree to abide by and conform to then and fully understand that my failure to do so may result in:

- a. Revocation of my Discharge,
- b. Modification of the Community Support Plan,
- c. Notification of the Court and proper legal authorities,
- d. Emergency hospitalization,
- e. Arrest and prosecution.

**Signatures:**

Patient \_\_\_\_\_ Date \_\_\_\_\_

Case Manager \_\_\_\_\_ Date \_\_\_\_\_

Forensic Monitor/designee \_\_\_\_\_ Date \_\_\_\_\_

SW/designee \_\_\_\_\_ Date \_\_\_\_\_

Treatment Team Representative \_\_\_\_\_ Date \_\_\_\_\_

- 11. Agency Agreement to Treat (Attached)
- 12. Plan for Monitoring Compliance (Attached)

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY

IN RE:

NO. \_\_\_\_\_ OF 2 \_\_\_\_\_

PETITION FOR DISCHARGE OF PATIENT ACQUITTED BECAUSE OF LACK OF CRIMINAL  
RESPONSIBILITY

AND NOW comes \_\_\_\_\_,

Superintendent/Administrator of \_\_\_\_\_ State

Hospital/State Forensic Hospital, pursuant to Section 304 (g)(4) of the Mental Health

Procedures Act, as amended (50 P.S. 7304 (g)(4), and petitions this Honorable Court for

permission to discharge \_\_\_\_\_. In support

thereof, Petitioner respectfully

Represents as follows:

1. \_\_\_\_\_ was acquitted because of lack of criminal  
responsibility (found not guilty by reason of insanity) on charges of \_\_\_\_\_  
\_\_\_\_\_ before Judge \_\_\_\_\_  
\_\_\_\_\_ of the \_\_\_\_\_ County Court of Common Pleas on  
\_\_\_\_\_, \_\_\_\_\_, docket no(s) \_\_\_\_\_.

2. \_\_\_\_\_ was committed by Judge \_\_\_\_\_  
of the \_\_\_\_\_ County Court of Common Pleas and was placed at  
\_\_\_\_\_ State Hospital/State Forensic Hospital on \_\_\_\_\_  
\_\_\_\_\_, for a period not to exceed \_\_\_\_\_, pursuant to 304 (g)(2) of the Mental

Health Procedures Act, as amended (50 P.S. 7304 (g)(2)). ( If applicable: He was most  
recently recommitted on \_\_\_\_\_, 2 \_\_\_\_\_, by Judge \_\_\_\_\_.)

\_\_\_\_\_’s current commitment expires on \_\_\_\_\_, 2\_\_\_\_\_.

3. \_\_\_\_\_ was examined by \_\_\_\_\_,

A licensed physician on \_\_\_\_\_, 2\_\_\_\_\_, and determined to be no longer severely mentally disabled, as defined in 301 (a) of the Mental Health Procedures Act, as amended (50 P.S. 7301 (a)). See report of Dr. \_\_\_\_\_, attached as Exhibit A.

WHEREFORE, your Petitioner prays this Honorable Court hold a hearing within 15 days of the date of filing pursuant to 50 P.S. 7304 (g)(4) and Order the discharge of \_\_\_\_\_ from \_\_\_\_\_ State Hospital/State Forensic Hospital.

Respectfully submitted,

\_\_\_\_\_  
Superintendent/Administrator

Date: \_\_\_\_\_

\_\_\_\_\_ State Hospital

\_\_\_\_\_ State Forensic Hospital

THIS PETITION IS MADE SUBJECT THE PENALTIES PROVIDED UNDER 18 PA. C.S. 4904 RELATING TO UNSWORN FALISFICATION TO AUTHORITIES.

## Acronyms and Definitions Related to the Regional Forensic Psychiatric Center Bulletins

### Acronyms

**BSU** Base Service Unit

**CSP** Community Support Program

**SCU** Service Coordination Unit

**CITCSP** Comprehensive Individual Treatment and Community Support Plan

**DOC** Department of Corrections

**GBMI** Guilty But Mentally Ill

**HIPAA** Health Insurance Portability and Accountability Act

**IST** Incompetent to Stand Trial

**MHPA** Mental Health Procedures Act

**NGRI** Not Guilty By Reason of Insanity

**OMHSAS** Office of Mental Health and Substance Abuse Services

**RFPC** Regional Forensic Psychiatric Centers

**SRTP** Sexual Responsibility and Treatment Program

**SCI** State Correctional Institution

**SMH** State Mental Hospital

## Definitions

The Act: The Mental Health Procedures Act of 1976, and as amended in 1978, Act 143

Active Treatment: Psychiatric treatment and rehabilitation interventions that ameliorate problems or symptoms and promote the acquisition of skills, supports and resources needed for community living. All interventions must be specifically designed to improve an individual's condition. For an activity to be considered a part of active treatment there must be a specific relationship between the activity and a goal or objective of an individualized treatment plan.

Comprehensive Individual Treatment and Community Support Plan (CITCSP): A strength-based process where a person's support and treatment team meet with the person to assist in discovering self-identified goals; skills, and community opportunities for successful community integration

Correctional Facility: Any detention facility, jail or prison directly operated by or contracted for by a municipal, county or state government.

Forensic patient: Any defendant who is committed under Article IV of the Mental Health Procedures Act, 50 PS § 7101 et seq. or other legal commitments to the state forensic service.

Guilty But Mentally Ill (GBMI): A defendant may be found GBMI at trial if it is determined beyond a reasonable doubt that the person is guilty of an offense, and was mentally ill at the time the offense was committed.

Incompetent to Stand Trial (IST): Substantial inability to understand the nature or object of the proceedings against him/her or to participate and assist in his/her defense.

Inpatient Forensic Psychiatric Program: An identifiable, organized program, operated under the governance of a state, county or municipal correctional facility, that provides 24 hour inpatient psychiatric services in physical space dedicated to the program's use, to criminally detained or incarcerated persons with serious mental illness who are admitted or committed to inpatient psychiatric care under the provision of the Mental Health Procedures Act.

Not Guilty By Reason of Insanity (NGRI): A legal status that means the individual has been adjudicated by a court or jury as not responsible because of mental infirmity, disease or defect.

Regional Forensic Psychiatric Centers: Provide active psychiatric treatment and/or psychiatric evaluation in a medium security facility to persons that are involved with the county-based judicial/corrections systems.

Treatment Team: An interdisciplinary team of at least three persons appointed by the program director, who are involved in the patient's treatment, including at least one physician and one health professional in mental health.