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Erick H. Cheung, Jonathan Heldt, Thomas Strouse, Paul Schneider

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Erick H. Cheung MD[a], Jonathan Heldt MD[b], Thomas Strouse MD[c], Paul Schneider MD[d]

[a]University of California Los Angeles David Geffen School of Medicine
[b]Jane and Terry Semel Institute for Neuroscience and Human Behavior, Psychiatry
[c]University of California Los Angeles David Geffen School of Medicine, Psychiatry
[d]VA Greater Los Angeles Healthcare System, Psychiatry

ABSTRACT

Medically hospitalized patients who lack decisional capacity may request, demand, or attempt to leave the hospital despite grave risk to themselves. The treating physician in this scenario must determine how to safeguard such patients, including whether to attempt to keep them in the hospital. However, in many jurisdictions there are no laws that address this matter directly. In this absence, psychiatrists are often called upon to issue an involuntary psychiatric hold (civil commitment) to keep the patient from leaving. Yet, civil commitment statutes were not intended for, and generally do not address, the needs of the medically ill patient without psychiatric illness. Civil commitment is permitted for patients who pose a danger to themselves or others, or who are gravely disabled, specifically as the result of a mental illness, and allows the transport of such individuals to facilities for psychiatric evaluation. It does not permit detention for medical illnesses nor the involuntary administration of medical treatments. Therefore, the establishment of hospital policies and procedures may be the most appropriate means of detaining medically hospitalized patients who lack capacity to understand the risks of leaving the hospital, in addition to mitigating the potential tort risk faced by the physician for acting in a manner that protects the patient. The purpose of this article is to identify the array of clinical and medical-legal concerns in these scenarios, and to describe the development of a "medical incapacity hold" policy as a means of addressing this unresolved issue.

KEYWORDS: Medical incapacity hold, psychiatric hold, detainment, capacity, involuntary hospitalization