

Professional Credentials
(See also *Involuntary Examinations*)

General

Q. Do professionals identified in the Baker Act have to be licensed in the State of Florida?

Yes, physicians (including psychiatrists), clinical psychologists, clinical social workers, psychiatric nurses, Licensed Mental Health Counselors, and Licensed Marriage and Family Therapists must be licensed under their respective Florida laws. The only exceptions are for physicians and psychologists who are employed at a veteran's hospital that qualifies as a receiving or treatment facility under the Baker Act; this does not include veteran's outpatient clinics. See additional questions below pertaining to the VA.

Q. Which licensed healthcare professionals can actually Baker Act a client? It is my understanding that an RN cannot.

You are correct that a RN cannot initiate a Baker Act involuntary examination. The Baker Act identifies the following as having the authority to do this:

- **Psychiatrist** means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.
- **Physician** means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.
- **Clinical psychologist** means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.
- **Psychiatric nurse** means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician. (*not the same as an ARNP who may not be eligible*)
- **Clinical social worker** means a person licensed as a clinical social worker under chapter 491.
- **Marriage and family therapist** means a person licensed as a marriage and family therapist under chapter 491.
- **Mental health counselor** means a person licensed as a mental health counselor under chapter 491.

In addition, the Florida Attorney General has determined that a Physician Assistant can initiate an involuntary examination as well. Please note that only a psychiatrist,

physician, or clinical psychologist is authorized to actually conduct the involuntary examination at a hospital or Baker Act receiving facility and authorize a person's release.

Q. Can an Advanced Registered Nurse Practitioner (ARNP), Physician's Assistant, or Clinical Psychologist perform duties permitted under their licensure but required by the Baker Act to be performed by a physician?

NO. The licensure statutes are general laws that lay out the maximum scope of possible practice for specified professionals. The Baker Act is one specific statute under which a professional may practice. The limits of a specific statute take precedence over a general statute. Therefore, if the Baker Act places responsibility for a particular function on a physician, it cannot be delegated to another differently licensed professional. This applies to all aspects of mandatory examinations, emergency treatment orders, restraint/seclusion orders, certification of competency, and other duties. The only exception is for PA's due to the Attorney General Opinion issued in May 2008.

Q. Chapter 394.459(2)(c) requires that when a person is in a Baker Act receiving facility in excess of 12 hours, he or she must be given a physical examination by a health practitioner, authorized by law to give such examinations, within 24 hours after arrival at the facility. Our understanding is that the health practitioners authorized to give physical exams are physicians, ARNPs, and physician assistants. Nursing assessments do not qualify as physical exams. Is this correct?

Scope of practice is defined in chapter 458 and 459 for physician assistants and in chapter 464 for nurses, including nurse practitioners. Rules promulgated to implement these laws contain additional information that may need to be interpreted by the Licensing Boards.

It is standard practice for ARNP's and Physician Assistants to perform physical examinations if included in the protocols approved by their supervising physicians. However, a nurse who is not an ARNP is not permitted to conduct a physical examination. Such a nurse would perform a nursing assessment as defined

(3)(a) "Practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:

1. The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.
2. The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.
3. The supervision and teaching of other personnel in the theory and performance of any of the above acts.

While the Baker Act statute and rule applying to hospital based receiving facilities don't provide clarity on this issue, the rules governing Crisis Stabilization Units are clear:

65E-12.103 Definitions.

(9) "Nursing Assessment" is a general physical assessment, begun immediately upon admission and completed within 24 hours, conducted by a registered nurse as defined under section 464.003, F.S., known as Nurse Practice Act, and is a procedure which is a preliminary part of the initial admission process which is not intended to serve as the physical examination required under section

394.459(2)(c), F.S., unless it is performed as a physical examination by an advanced registered nurse practitioner as provided under section 464.012, F.S.

(10) "Physical Examination" is a physical evaluation performed by a licensed physician or by an advanced registered nurse practitioner under the supervision of a licensed physician as provided under section 464.012, F.S., or by a physician's assistant under the supervision of a licensed physician as provided under section 458.347, F.S.

Q. I recognize that Christian counselors and therapists are licensed through the Florida Association of Christian Counselors and Therapists to perform such duties as providing therapeutic services. However, does this mean that they are also permitted under Chapter 491 or any other to initiate a BA52? If so, how are they monitored in the event of an impropriety if not registered in the State?

If these Christian counselors and therapists also have licenses under chapter 490 or 491 (clinical psychologists, clinical social workers, mental health counselors, or marriage and family therapists), they can initiate an involuntary examination (BA 52b) under the Baker Act.

394.455 Definitions.--As used in this part, unless the context clearly requires otherwise, the term:

(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

(4) "Clinical social worker" means a person licensed as a clinical social worker under chapter 491.

(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.

(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.

However, if they are only licensed or certified under other entities such as FACCT, they would not be eligible to initiate such examinations.

Q. We received a man for involuntary examination on a Baker Act form that was initiated by his ex-wife with whom he still lives. She is a licensed Marriage and Family Therapist. I believe this is an ethics issue and have attempted to contact Consumer Services at the Department of Health/Medical Quality Assurance. Is this

the right office to notify and what are the steps and confidentiality implications of reporting this?

No one authorized to initiate an involuntary examination should exercise such poor judgment as to initiate such a process on a family member. While there is no specific prohibition in the Baker Act for such an action, the therapist should seek out an ex parte court order, intervention by a law enforcement officer, or have her ex-husband examined by another authorized mental health professional who can maintain professional objectivity. However, DOH Medical Quality Assurance is the responsible governmental entity with whom such a report should be filed.

Physicians

Q. Our hospital now has psychiatric residents from osteopathic and medical training. Behavioral Health had questions regarding the legality of residents completing the competency forms as well as changing a patient's status from involuntary to voluntary and vice versa. Can psychiatric residents perform Baker Acts?

A psychiatric resident can initiate an involuntary examination under the Baker Act only if he/she is fully licensed in Florida as a medical or osteopathic physician under chapters 458 or 459, FS. If not licensed as a physician in Florida, he/she cannot initiate the Baker Act examination. A physician is defined in the Baker Act as:

A medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

The competency of a person can be determined and documented by any physician who is fully licensed in Florida as a medical or osteopathic physician; the law doesn't require a psychiatrist to perform this evaluation.

394.455(21)“Physician” means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

While the definition of a physician requires experience in the diagnosis and treatment of mental disorders, there is no minimum quality or quantity specified in law or rule. Therefore, a Florida licensed physician would have such experience. The competency exam is addressed in the voluntary provisions of the Baker Act:

394.4625 Voluntary admissions.

(1)AUTHORITY TO RECEIVE PATIENTS.—

(f)Within 24 hours after admission of a voluntary patient, the admitting physician shall document in the patient's clinical record that the patient is able to give

express and informed consent for admission. If the patient is not able to give express and informed consent for admission, the facility shall either discharge the patient or transfer the patient to involuntary status pursuant to subsection (5).

This is further addressed in the rules governing the Baker Act, as follows:

65E-5.170 Right to Express and Informed Consent.

(1) Establishment of Consent.

(a) Receiving Facilities. As soon as possible, but in no event longer than 24 hours from entering a designated receiving facility on a voluntary or involuntary basis, each person shall be examined by the **admitting physician** to assess the person's ability to provide express and informed consent to admission and treatment. ...Documentation of the assessment results shall be placed in the person's clinical record. ..

(c) If the admission is voluntary, the person's competence to provide express and informed consent for admission shall be documented by the admitting physician. Recommended form CF-MH 3104, Feb. 05, "Certification of Person's Competence to Provide Express and Informed Consent," which is incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter may be used for this purpose. The completed form or other documentation shall be retained in the person's clinical record. Facility staff monitoring the person's condition shall document any observations which suggest that a person may no longer be competent to provide express and informed consent to his or her treatment. In such circumstances, staff shall notify the physician and document in the person's clinical record that the physician was notified of this apparent change in clinical condition.

(d) In the event there is a change in the ability of a person on voluntary status to provide express and informed consent to treatment, the change shall be immediately documented in the person's clinical record. A person's refusal to consent to treatment is not, in itself, an indication of incompetence to consent to treatment.

(e) Competence to provide express and informed consent shall be established and documented in the person's clinical record prior to the approval of a person's transfer from involuntary to voluntary status or prior to permitting a person to consent to his or her own treatment if that person had been previously determined to be incompetent to consent to treatment. Recommended form CF-MH 3104, "Certification of Person's Competence to Provide Express and Informed Consent," as referenced in paragraph 65E-5.170(1)(c), F.A.C., properly completed by a physician may be used for this purpose.

"Admitting" physician isn't defined in the Baker Act law or rules. Any Florida licensed physician is authorized to initiate an involuntary examination and to conduct the exam. However, he/she isn't authorized to approve release the patient – this requires a psychiatrist, a psychologist or an emergency physician.

394.463(2)INVOLUNTARY EXAMINATION.—

(f)A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a

psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

A non-psychiatric physician cannot sign a petition seeking involuntary inpatient placement.

Q. Can active duty physicians not licensed in FL (working in a naval facility located in FL) complete the Baker Act? Can FL licensed Physician Assistants complete the Baker Act?

Chapter 394.455, FS (Baker Act) defines mental health professionals who have the authority to initiate an involuntary examination as follows:

(21) "Physician" means a medical practitioner **licensed under chapter 458 or chapter 459** who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

(24) "Psychiatrist" means a medical practitioner **licensed under chapter 458 or chapter 459** who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

The law also authorizes a clinical psychologist, psychiatric nurse, LCSW, LMHC, and LMFT licensed in Florida to initiate involuntary examinations. Each must meet the definition for the profession found in the Baker Act, which differs in some cases from the licensing laws.

As you can see, the only exception made for out-of-state licensure for physicians is for those employed in VA hospitals -- not even in VA outpatient clinics. There is a proposed bill to recognize physicians and psychologists employed by the VA or DOD; however, this change requires legislative action. While Physician Assistants aren't recognized in the statute, the Florida Attorney General did opine in 2008 that Physician Assistants could also initiate involuntary examinations because they were licensed under Chapters 458 and 459, FS.

10 USCS 1094 states in paragraph (a)(2) that a health care professional may practice his/her profession in any state where deployed. While physicians licensed in other states who are deployed in Florida can certainly practice medicine here, this doesn't seem to extend to ancillary roles only authorized by state law.

A related issue did arise about federal law enforcement officers and their ability to initiate an involuntary examination. The Florida Attorney General concluded in AGO 99-68:

...unless the Legislature amends the definition of "law enforcement officer" for purposes of the Baker Act to include federal officers, I am of the opinion that federal law enforcement officers do not constitute law enforcement officers for

purposes of Florida's Baker Act, and thus possess no authority under the act to initiate the involuntary examination of a person or to transport such person as law enforcement officers.

Based on the above, it doesn't appear that mental health professionals licensed in other states can initiate involuntary examinations. However, Physician Assistants licensed in Florida may initiate, but the AG opinion didn't extend their authority to other duties such as actually performing an examination once arriving at a receiving facility, authorizing a person's release, determining competency to consent to admission/treatment, signing a petition for involuntary placement, etc.

Q. For clarification purposes, can a ED Physician or MD (without BA Training) in a hospital based private receiving facility complete a competency evaluation?

Any physician licensed in Florida is authorized under the Baker Act to document a person's competency. This is defined as follows:

394.455, FS (15) "Incompetent to consent to treatment" means that a person's judgment is so affected by his or her mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.

These same physicians are also authorized to determine a person is not competent to consent and can document this in the chart and designate a Health Care Proxy (or surrogate if one has been previously established in an advance directive).

The 3104 form has been developed to document a person's competency status. This form identifies that a physician is the only professional qualified under the Baker Act to determine this status – the law doesn't require a psychiatrist. The definition of a physician in the Baker Act does require that a physician have "experience in the diagnosis and treatment of mental and nervous disorders". Since this isn't further defined in law or rule, I believe any licensed physician meets this requirement by virtue of their rotations, internships, residencies, or practice in whatever area of medicine they choose.

Q. Who can discontinue the involuntary examination? Can it be discontinued only by a psychiatrist, psychologist, or ED physician with mental health training or can it be discontinued by any physician?

Any Florida licensed medical or osteopathic physician or clinical psychologist is authorized to conduct the initial mandatory involuntary examination and to document that the patient doesn't meet involuntary placement criteria. Since you are not designated as a receiving facility, either the physician or psychologist can also authorize the person's release from your hospital. There is a different list of credentialed professionals required for authorizing release from a designated receiving facility.

Q. I would like to know if licensed acupuncture physicians can Baker Act a patient.

The only physicians who are authorized by law to initiate a Baker Act involuntary examination are those licensed under Chapter 458 and 459 – medical and osteopathic physicians. Otherwise such initiation requires a circuit court judge, law enforcement officer, clinical psychologist, LCSW, licensed mental health counselor, licensed marriage and family therapist, or psychiatric nurse.

Q. Does any doctor with a license from the State of Florida who treats patients qualify as “a physician experienced in the diagnosis and treatment of mental and nervous disorders”?

A. Any medical or osteopathic physician licensed by the state of Florida or employed in a VA hospital meets this requirement. There are no further requirements in law or Florida Administrative Code beyond the statutory definition. However, some facilities have established policies and procedures more stringent than those in the law. In those cases, the most stringent requirement applies.

Q. The Baker Act requires a physician to have had experience in the diagnosis and treatment of mental and nervous disorders. Can this be a general practitioner or emergency physician who learned mental and nervous disorder in medical school or must they have additional training?

Any physician who is licensed under 458 or 459 Florida Statutes has had some level of experience in the diagnosis and treatment of mental and nervous disorders, whether it is during rotations in medical school, residency, or in practice as a GP, family practitioner, emergency physician, or other. There should be no problem as long as the physician is fully licensed in Florida (except for physicians employed in VA hospitals who are licensed in other states). There is no reference to specialized training to initiate or conduct an involuntary examination.

Q. Is it true that a non-psychiatrist physician, during the involuntary examination, can determine competency? I think the answer is yes, but just need verification.

You are correct. A non-psychiatric physician can determine competency to consent to treatment. No professional other than a physician can do so. Whether on voluntary or involuntary status, the physician must certify that the person is able to make well-reasoned, willful and knowing decisions about his/her health and mental health care – the definition of competence to consent – before permitting the individual to consent to treatment. All voluntary patients must be certified as “competent” within 24 hours of admission and any persons on involuntary status who are refusing examination but allowed to consent to their own treatment must also be certified.

It’s important that the documentation in the clinical record reflects that the individual maintains this competence as long as treatment is provided. If at any time the individual displays statements or behaviors that suggest he/she isn’t any longer able to make such well reasoned decisions, treatment can’t be continued except when imminent danger

has been documented (ETO) or a legally authorized substitute decision-maker is designated to provide consent.

Q. Can a Resident physician (in psychiatry) do any or all of the opinions on a BA 32? I have always been under the understanding that it had to be an attending psychiatrist, but one of our psychiatrists is allowing residents to do this.

Chapter 394.467(2) of the Baker Act requires that the person be examined by a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist. In chapter 394.455, the terms used in the Baker Act are delineated. Psychiatrist and Clinical psychologist are specifically defined as follows:

(24) "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

A "resident physician in psychiatry" can perform the first or second opinion only if fully licensed in Florida under chapters 458 or 459 and who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

Since such "resident physicians" are probably still acquiring their 3 years of primary psychiatric experience, they would not be qualified to perform the evaluations for involuntary inpatient placement. If fully licensed in Florida, they could initiate involuntary examinations but would not be qualified to approve the release of a person on involuntary examination status from a receiving facility or to provide an opinion for involuntary inpatient placement without more extensive primary experience in psychiatry.

These residents are acting outside of their legal authority in providing such opinions because they don't meet the statutory definition of a psychiatrist in the Baker Act.

Q. Is there any reason why an ED physician or the PCP from "lifting" a Baker Act after it has been initiated by a law enforcement officer?

Regardless of whether a judge, law enforcement officer, or authorized mental health professional initiates the examination, it is the sole authority of the attending physician or a clinical psychologist to conduct the examination, and in your hospital, to authorize the person's release.

Q. Can a non-psychiatric emergency room physician evaluate and release a patient from involuntary (BA) examination? I was of the understanding that only a psychiatrist or psychologist could do that. Was that a recent change in the statute?

Yes, a non-psychiatric emergency room physician is qualified under the law to initiate the involuntary examination, conduct the examination, and to approve the release of the patient found not to meet the criteria for involuntary placement from a receiving facility or from a hospital ER that isn't part of a receiving facility. There hasn't been any change in this section of the law for a number of years.

Q. How are physicians held accountable to the requirements of the Baker Act?

The Medical Practice Act states that failure to comply with the Florida Patient's Bill of Rights is grounds for disciplinary action against physicians. [458.331(1)(mm), FS].

Some of these rights, among others, include:

- Be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.
- Know who is providing medical services and who is responsible for his or her care.
- Be given information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.
- A prompt and reasonable response to questions and requests.
- Refuse any treatment, except as otherwise provided by law.
- Impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.
- Treatment for any emergency medical condition that will deteriorate from failure to provide treatment.
- Know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.
- Know what patient support services are available, including whether an interpreter is available if he or she does not speak English.
- Know what rules and regulations apply to his or her conduct.
- Express grievances regarding through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

Physician Assistants

Q. What is the extent of a Physician Assistant's authority under the Baker Act?

The Florida Attorney General issued Opinion 08-31 about this issue. The AG stated that s.458.347(3) requires that each physician supervising a PA must be qualified in the medical area in which the PA is to perform and shall be responsible for the performance of the PA. It requires the boards to adopt rules about supervising physicians in scope of practice in which the PA is used. The Board of Medicine adopted rule 64B8-30.012(1) FAC states:

A supervising physician shall delegate only tasks and procedures to the PA which are within the supervising physician's scope of practice. The PA may work in any setting that is within the scope of practice of the supervising physician's practice. The supervising physician's scope of practice shall be defined for the

purpose of this section as “those tasks and procedures which the supervising physician is qualified by training or experience to perform.”

Based on the above the AG stated that a PA “licensed pursuant to Chapter 458 or 459, FS may refer a patient for involuntary evaluation provided that the PA has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks as are within the supervising physician’s scope of practice”

As you can see, the AG only referred to the ability to “refer a patient for involuntary evaluation” and didn’t extend the opinion to any of the other Baker Act responsibilities assigned to physicians. While the AG didn’t mention “certification” in the opinion, he did specifically state the PA had to have experience in the diagnoses and treatment of mental illness and that this must be within the physician’s scope of practice. Many Emergency Physicians believe they aren’t qualified to conduct psychiatric evaluations – if so, their PA’s probably wouldn’t be qualified either.

Q. Regarding physician assistants initiating the Baker Act changing since the Florida Attorney General's statement on May 2008: does the AG opinion also authorize PA's to do anything else and what kind of impact does this opinion have on ARNP's who are licensed under 464, FS instead of 458, FS, but who also act as independent licensed practitioners under protocols approved by physicians?

DCF is required to fully comply with the AG Opinion Number: AGO 2008-31 dated May 30, 2008. The AG opinion only references initiation of an involuntary examination, but doesn’t authorize a Physician Assistant to perform any other duty limited to a physician such as:

- Conducting the involuntary examinations (along with physicians and clinical psychologists) once the patient has arrived at a hospital or a receiving facility.
- Authorizing the release of persons from ED's after the involuntary examination has been conducted.
- Certifying competency to consent to treatment .
- Authorizing emergency treatment orders
- Authorizing seclusion and restraints

The AG Opinion regarding Physician Assistants has no relationship to ARNP’s.

Q. I read the comment from the Attorney General on the Baker Act web site regarding PA's being able to write for an Involuntary Exam. There were no comments on if this is valid or not. DCF website has always said “no” on this. There is no box to check for a PA on the Involuntary examination form. I feel that the law is strict with what types of ARNP's can Baker Act and PA's don't have any training to speak of in psychiatry issues. I think it would be out of sync for PA's to be able to write an Involuntary without many psychiatric type classes like all of the other disciplines have to have. What do you know about this?

The Florida Attorney General did indeed rule that a Physician Assistant has the authority to initiate an involuntary examination (not any other duties within the scope of a physician’s practice) under the Baker Act. The Department of Children and Families

accepts the authority of the Attorney General to make such decisions unless the Legislature subsequently decides to limit PA's authority under the law. DCF has instructed PA's to create a box labeled "physician assistant" on the BA-52b form until that form can be modified. Since the form is a "mandatory form", a formal redrafting of the form will wait until the next time the 65E-5 rule is revised.

Q. How are we to determine who the PA is practicing under and whether or not he or she meets Baker Act definition for executing a Baker Act? This should not be a problem in a hospital, except we have some hospitals who only use PAs in their Emergency Rooms after hours and some of the outlying outpatient medical clinics are only staffed by PAs.

There isn't any way to know about a PA's credentials. If the person signs the BA-52 form as a Physician's Assistant, you can presume he/she has all the right credentials unless you have reason to believe the credentials have been misstated. Only if a complaint is made or a law suit is filed, would any further search usually be made. Remember, the AG opinion only allows a PA to initiate an involuntary examination, not to perform any of the other duties permitted to a physician.

Psychologists

Q. I am a psychology resident and employee at our CMHC and have a question about the definition of Clinical Psychologist as defined in Chapter 394. Currently, I am an LMHC. I will receive my license as a psychologist the end of this year. As I interpret the definition of Clinical Psychologist, I must maintain my LMHC status to initiate an Involuntary Examination. In addition, I may not provide second opinions or release individuals from the Baker Act for an additional two years after receiving my license as a psychologist. Am I interpreting this definition correctly? Would you share your interpretation of this definition regarding the requirement that psychologists have three years of postdoctoral experience to initiate an Involuntary Examination when this is not required for LMHC's or LCSW's?

The current definition of a clinical psychologist in the Baker Act has been there a long time, while the requirements under chapter 490 for a psychologist have changed over the years. As a result, we have conflict between the two statutes.

394.455(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with **3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure**, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

Where two statutes are in conflict, the more specific one takes precedence over the general law. With a license to practice psychology, you can do the full range of practice authorized in chapter 490 with the exception of Baker Act related practice. You must have **three years** of postdoctoral experience in the practice of clinical psychology. Licensure now requires **two years** of such experience. Therefore you would have to have **one additional year** of experience after licensure to be qualified to initiate an

involuntary examination as a psychologist and to perform involuntary examinations once a person arrives at a receiving facility, approve the release of a person from a receiving facility, and to provide a second opinion on an involuntary placement certificate. You are correct that you should maintain your LMHC licensure in the meantime so you can legally initiate an involuntary examination.

Q. One place in the Baker Act Handbook appears to indicate that a clinical psychologist can offer voluntary placement and then it goes on to cite the approved forms for this process. However, another place indicates that only a physician can determine this after the determination of ability to provide express and informed consent. Please clarify.

The law and the Florida Administrative Code permit a licensed clinical psychologist to perform the involuntary examination, determine whether the person meets involuntary placement criteria, and if not, to authorize the person's release or discharge from a receiving facility. However, the law [394.4625(1)(f), FS] states that only the admitting physician can document a patient's express and informed consent for voluntary admission. This would apply to the admission on voluntary status as well as transfer from involuntary to voluntary status. While the psychologist can "offer" transfer to voluntary status, this transfer would be contingent on the subsequent examination and documentation by a physician that the person can make well-reasoned, willful, and knowing decisions concerning his or her medical or mental health treatment. Performing the involuntary examination and determining competence to consent to voluntary status are two different issues for which different credentials are required.

Psychiatric Nurses

Q. Was there a change to the statute a few years ago giving ARNP's the ability to rescind BA's in counties that had less than 50,000 people? I was looking for the verbiage but can't find anything.

No such change in the statute was made. While other mental health professionals can initiate an involuntary examination, only a physician or psychologist is qualified to perform the involuntary examination. Only a psychiatrist, psychologist, or emergency physician is authorized to approve the release a person after an involuntary examination.

However, the involuntary inpatient placement and involuntary outpatient placement provisions do permit a "psychiatric nurse" to provide a 2nd opinion on the petition filed with the court in counties with less than 50,000 population when the administrator certifies that there is no psychiatrist or psychologist to perform this duty:

394.4655(2), FA INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)1. A patient who is being recommended for involuntary outpatient placement by the administrator of the receiving facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the

preceding 72 hours, that the criteria for involuntary outpatient placement are met. **However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means.** Such recommendation must be entered on an involuntary outpatient placement certificate that authorizes the receiving facility to retain the patient pending completion of a hearing. The certificate shall be made a part of the patient's clinical record.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient placement, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the patient, recommend involuntary outpatient placement. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. **However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means.** Such recommendation must be entered on an involuntary outpatient placement certificate, and the certificate must be made a part of the patient's clinical record.

394.467 Involuntary inpatient placement.

(2) **ADMISSION TO A TREATMENT FACILITY.**—A patient may be retained by a receiving facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the receiving facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. **However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means.** Such recommendation shall be entered on an involuntary inpatient placement certificate that authorizes the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

It's also important to know that many ARNP's aren't currently qualified to be "psychiatric nurses" under the current definition in the Baker Act. A bill has been introduced to modify the Baker Act to acknowledge ARNP's in the initiation of involuntary examinations, but not to perform the exam once the person is delivered to a receiving facility.

Q. Can an ARNP (nurse practitioner with a master's degree) who has specialized in psychiatry and also has a Doctor of Nursing Practice degree evaluate a Baker Act patient and make the determination that the patient does not meet Baker Act criteria and thus discharge the patient home?

A registered nurse with a master's or doctorate degree in psychiatric nursing is eligible to initiate an involuntary examination. Such a nurse cannot perform the involuntary examination – this can only be done by a physician or psychologist. Such a nurse is eligible to perform the 2nd opinion on an involuntary inpatient or involuntary outpatient placement petition in counties with less than 50,000 people when the administrator certifies that no psychiatrist or psychologist is available to provide this. Bottom line is that a nurse is not eligible to do the evaluation and authorize a person's release from involuntary status.

Q. I know that expanded use of Psychiatric ARNP's was considered in the proposed Baker Act "rewrite" but I was wondering if there is any provision in current statute or FAC which would allow a Psychiatric ARNP to play a role in admission or discharge decisions, orders, daily rounds, etc. I've heard that larger CSU's and free standing psychiatric hospitals utilize them to do the required physical examination and maybe some other tasks that our psychiatrists perform.

The only major change in ARNP proposed by DCF was in the definition of "psychiatric nurse" to make the two definitions more closely aligned. However, the main thing to remember is that if there is no conflict between chapter 464 governing nursing practice and chapter 394 governing the Baker Act, an ARNP is authorized to perform within the scope of practice identified in the nurse license law and his/her approved protocols.

If chapter 394 is more prescriptive, it as the more specific law of the two, would take precedence over the nurse practice law in a Baker Act setting. For example, the Baker Act prescribes who can initiate an involuntary examination, who can conduct one, and who can authorize release of a person from involuntary status, as well as evaluating the competence of a person to be on voluntary status or to provide express and informed consent to medications – none of which can be done by an ARNP. However, the Baker Act law and rules are silent as to who can round or who can prescribe medications – this would defer to chapter 464, protocols, and the facility's policies and procedures.

Regarding physical examinations, the Baker Act law specifies a "health care professional authorized by law to give such examination". This defers back to professional licensing laws permitting physicians, PA's, and ARNP's to conduct such physical examination.

The 2011 Baker Act Handbook has a new appendix L that has a "Quick Reference Guide to Decision-Making by Mental Health Professionals and Others". This Guide

includes a table identifying those functions specified in the Baker Act law and rule along with a check mark next to those professionals authorized to act. This may help.

DCF generally encourages the use of physician extenders whenever not specifically prohibited by the Baker Act law and rules (65E-5 and 65E-12), particularly in medically underserved geographic areas or where cost savings without loss of quality care can be obtained.

Q. Is an Advanced Registered Nurse Practitioner a psychiatric nurse under the Baker Act?

NO. A "psychiatric nurse" must not only be licensed under chapter 464, but must have a master's degree or a doctorate in psychiatric nursing and two years of post-master's clinical experience under the supervision of a physician. If the ARNP meets these training and experience criteria, they meet the definition of a psychiatric nurse. If not, the ARNP may not initiate an involuntary examination under the Baker Act.

Q. Can you provide me with the restrictions of duties of the "ARNP" as it relates to the Baker Act? What duties can they perform on a CSU unit?

The Baker Act statute doesn't recognize ARNP's and makes no reference to ARNP's. It does recognize a psychiatric nurse defined as

(23) "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

Many ARNP's were grandfathered in when the licensing statute was enacted with a 4 or 2 year nursing degree. Some have master's degrees in nursing, but not specifically in "psychiatric nursing" as required in the Baker Act. Some ARNP's may actually be "psychiatric nurses" and some are not. While ARNP's can provide any service in a non-Baker Act setting permitted by 464 licensure and under approved protocols, they cannot perform any function in a Baker Act receiving facility that isn't permitted under the more specific 394 law. Where two statutes are in conflict, the more specific statute prevails.

"Psychiatric nurses" can initiate involuntary examinations under the Baker Act law. ARNP's cannot. Chapter 65E-5, governing all Baker Act receiving facilities, has some provisions as follows:

65E-5.115 Mental Health Personnel. Whenever the term physician, psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, marriage and family therapist, or mental health counselor is used in these rules, the term is as defined in Section 394.455, F.S., or this rule chapter.

65E-5.180(9)(d) summarizes the role of nurses and ARNP's in emergency situations.

Chapter 65E-12, FAC that only governs CSU's makes the following specific references to nurses or nurse practitioners

(9) "Nursing Assessment" is a general physical assessment, begun immediately upon admission and completed within 24 hours, conducted by a registered nurse as defined under section 464.003, F.S., known as Nurse Practice Act, and is a procedure which is a preliminary part of the initial admission process which is not intended to serve as the physical examination required under section 394.459(2)(c), F.S., unless it is performed as a physical examination by an advanced registered nurse practitioner as provided under section 464.012, F.S. (10) "Physical Examination" is a physical evaluation performed by a licensed physician or by an advanced registered nurse practitioner under the supervision of a licensed physician as provided under section 464.012, F.S., or by a physician's assistant under the supervision of a licensed physician as provided under section 458.347, F.S.

Q. Can an ARNP operating under the license of an attending physician give Admission Orders?

The issue of who is authorized to give admission orders is not governed by the Baker Act law or rules. Unless this is governed by the state's hospital licensing law/rules or regulated by JCAHO or the federal Conditions of Participation, it would be subject to your own hospital's policies and procedures. However, an ARNP couldn't initiate an involuntary examination unless the ARNP had at least a master's degree in psychiatric nursing. This is regardless of whether the ARNP was operating under the license of an attending physician.

Q. I have questions about scope of practice for ARNP's and the Baker Act. One of our physicians is using an ARNP to manage his caseload at our receiving facility. Can an ARNP complete the competency section of the psy eval on a Baker Act? Can ARNP authorize an ETO and provide the authorization signature within 24 hours?

An ARNP can provide any service within his/her scope of practice in a Baker Act setting that is incorporated in the protocols established with the psychiatrists, including diagnoses and treatment, with certain exceptions:

- An ARNP cannot initiate an involuntary examination unless also meeting the Baker Act definition of a "psychiatric nurse" that requires no less than a Master's Degree specifically in "psychiatric nursing".
- Cannot perform the mandatory inpatient involuntary examination that only a physician or psychologist can conduct.
- Cannot conduct the Certificate of Competency that can only be conducted by a physician for voluntary patients, before allowing any patient on involuntary status to transfer to voluntary, and for adults allowed to consent to their own treatment. .
- Cannot provide an expert opinion for purposes of a petition for involuntary placement

- Cannot approve the release of a person from a Baker Act setting

Regarding ETOs, the Baker Act rules are clear that only a physician can order emergency treatment.

Q. Is there anything prohibiting an ARNP from determining a client no longer meets the BA criteria after the initial psychiatric evaluation? We would want to know your interpretation of this from both the Mental Health Law and ARNP practice guidelines. Currently, our ARNP's provide daily rounds /medication management, but when it comes to discharge, they defer to the physician who then sees the patient based on the ARNP opinion and completes the DC decision and the DC summary.

As you're probably aware there is a difference between a "psychiatric nurse" as defined in the Baker Act and an ARNP. A psychiatric nurse (must have no less than a master's degree in psychiatric nursing plus other qualifications) may initiate an involuntary examination, but only a physician or clinical psychologist can then perform that examination. Only a psychiatrist or psychologist can approve a person's release from a receiving facility.

This only speaks to the Baker Act requirements, not the ARNP practice guidelines. However, if these are different, the Baker Act would prevail. While its fine for the ARNP's to do daily rounds and medication management because this isn't prohibited in the Baker Act, the ARNP's are correct in deferring to a physician or psychologist to conduct the involuntary examination and to a psychiatrist or psychologist to approve the discharge.

Q. Can an ARNP do a psychiatric evaluation on a psychiatric patient in a psychiatry unit in a hospital even though it will be co-signed by the psychiatrist?

An ARNP isn't necessarily a "psychiatric nurse" as defined in the Baker Act, as follows:

394.455 Definitions.—

(23) "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

In order to even initiate an involuntary examination as a psychiatric nurse, that nurse would have to have no less than a master's degree in psychiatric nursing as documented on a college transcript. Many excellent psychiatric ARNP's don't meet this definition.

The Baker Act statute limits the authority to conduct the Initial Mandatory Involuntary Examination to physicians and psychologists.

65E-5.2801 Minimum Standards for Involuntary Examination Pursuant to Section 394.463, F.S. states:

(1) Whenever an involuntary examination is initiated by a circuit court, a law enforcement officer, or a mental health professional as provided in Section 394.463(2), F.S., an examination by a **physician or clinical psychologist** must be conducted and documented in the person's clinical record. The examination, conducted at a facility licensed under Chapter 394 or 395, F.S., must contain:

- (a) A thorough review of any observations of the person's recent behavior;
- (b) A review of mandatory form CF-MH 3100, "Transportation to Receiving Facility," as referenced in subsection 65E-5.260(2), F.A.C., and recommended form CF-MH 3001, "Ex Parte Order for Involuntary Examination," as referenced in subsection 65E-5.260(1), F.A.C., or other form provided by the court, or mandatory form CF-MH 3052a, "Report of Law Enforcement Officer Initiating Involuntary Examination," as referenced in subsection 65E-5.260(1), F.A.C., or mandatory form CF-MH 3052b, "Certificate of Professional Initiating Involuntary Examination," as referenced in subsection 65E-5.260(1), F.A.C.
- (c) A brief psychiatric history; and
- (d) A face-to-face examination of the person in a timely manner to determine if the person meets criteria for release.

Q. Can an ARNP write orders for a patient in an in patient psychiatric unit?

There is no reason why an ARNP whose protocols with a psychiatrist include doing rounds and writing medication orders couldn't perform those duties because the Baker Act doesn't govern this area of practice.

Q. I am the Chair of our Credentialing & Privileging Subcommittee and we need information about the qualifications of a psychiatric nurse. It is clear in the Baker Act definition that not all ARNPs can initiate a BA52; only those who are licensed under part 1 of 464 and who have a master's degree or doctorate in psychiatric nursing and 2 years of post-master's experience under the supervision of a physician. These are the guidelines that we have followed in our privileging process. However, the question that continues to arise is whether an ARNP who is certified as an "Adult Psychiatric & Mental Health Nurse Practitioner" is a psychiatric nurse under 394. In the Statute there is no mention of certification being equivalent to the master's or doctorate, but we would like to lay this matter to rest.

The only way to document the nurse's credentials is to obtain a copy of his/her transcript from an accredited graduate school reflecting a minimum of a master's degree in "psychiatric nursing". Many people with ARNP certification were grandfathered in with less than a master's degree or they may have a master's degree in nursing without it being specifically in psychiatric nursing. No amount of training or experience in the psychiatric field substitutes for the legislative requirement for a Masters in psychiatric nursing.

The current definition of a "psychiatric nurse" much preceded the establishment of "ARNP's". However, where there is conflict between two statutes, the more specific statute trumps the more general one. In this case, the Nurse Practice Act lays out the scope of practice allowed to ARNP's, but the Baker Act being the more specific statute, limits how that professional can participate under the Florida Mental Health law. Since

there is no conflict in ARNP's being able to diagnose, prescribe and administer, they can do that in Baker Act settings under chapter 464. However, the Baker Act limits the initiation of involuntary examination, conduction of the examination, approval for release, establishment of competency to consent, initiation of ETO's, and initiation of involuntary placement to specific professionals.

Q. I am a Psychiatric ER nurse and unit Psych RN as well. I am now starting to work with a Home Health Agency providing home visits, care and follow-up to psychiatric patients. Can we, as psychiatric nurses, Baker Act patients if they meet criteria?

Psychiatric nurses are eligible to initiate involuntary examinations under the Baker Act. However, the definition of a psychiatric nurse in the Baker Act is what will determine whether you can perform this function or not. It is defined as:

394.455 Definitions.--As used in this part, unless the context clearly requires otherwise, the term:

(23) "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

This means that if you don't have at least a master's degree in psychiatric nursing, you wouldn't be able to initiate the examination. Many ARNP's were either grandfathered in with less than a master's degree or their transcripts from their master's programs don't specify that it is of a psychiatric nature. Many nurses have outstanding training and experience, but it would not suffice unless it meets the definition above. However, if you have the master's degree in psychiatric nursing and have the two years of post-master's clinical experience under the supervision of a physician, you wouldn't need any additional certification in order to initiate a Baker Act involuntary examination.

Q. Our administration recently advised us that an LPN is unable to do an admission nursing assessment or admission note. The reason we were given is that it is stated in the Baker Act Law. Can you advise if this is covered?

Your administration is correct that the nursing assessment in a CSU/SRT can only be done by a registered nurse or ARNP. These rules haven't been updated in many years and the usual scope of practice for an LPN has grown over this time. However, until the rules are changed, the standard for CSU's will exceed that required for hospital-based receiving facilities and must be followed. While the Baker Act statute (394, FS) and the rules (65E-5, FAC) don't address this issue, the rules governing CSU and SRT facilities do. The following provisions govern this issue:

65E-12.103 (9) "Nursing Assessment" is a general physical assessment, begun immediately upon admission and completed within 24 hours, conducted by a **registered nurse** as defined under section 464.003, F.S., known as Nurse Practice Act, and is a procedure which is a preliminary part of the initial admission process which is not intended to serve as the physical examination required under section 394.459(2)(c), F.S., unless it is performed as a physical

examination by an advanced registered nurse practitioner as provided under section 464.012, F.S.

65E-12.107 Minimum Standards for Crisis Stabilization Units (CSUs). In addition to sections 65E-12.104, 65E-12.105, and 65E-12.106, F.A.C., above, these standards apply to CSU programs.

(2) Admission.

(a) All persons admitted to a CSU shall be admitted pursuant to chapter 394, part I, F.S., and chapter 65E-5, F.A.C. Each CSU shall provide admission services on a 24-hour-a-day, 7-days-a-week basis.

(b) Initial Assessment.

2. All persons admitted to a CSU shall be provided a nursing assessment, begun at time of admission and completed within 24 hours, by a **registered nurse** as part of the assessment process.

65E-12.108 Minimum Standards for Short-Term Residential Treatment Programs (SRT). In addition to sections 65E-12.104, 65E-12.105, and 65E-12.106, F.A.C., above, these standards apply to SRT programs.

(1) Admission Criteria.

(2) Nursing Assessment and Physical Examination. All persons shall be given a **nursing assessment** and shall be given a physical examination within 24 hours of admission. The physical examination shall include a complete medical history and documentation of significant medical problems. It must contain specific descriptive terms and not the phrase, "within normal limits." If the person received a physical examination at an inpatient program or CSU prior to transfer to the SRT, no further physical examination will be necessary unless clinically indicated or it does not meet the requirements of this section. General findings must be written in the individual's clinical record within 24 hours.

Chapter 491 Professionals

Q. I understand that an LCSW can initiate a Baker Act or Marchman Act. Can an LCSW also rescind one?

An LCSW can initiate a Baker Act involuntary examination, but only a physician or psychologist can conduct the examination once initiated. Only a psychiatrist, psychologist or ED physician can approve the release of a person from a receiving facility after an involuntary examination.

Regarding the Marchman Act, requirements are quite different. A law enforcement officer can initiate Protective Custody, a circuit court can initiate Involuntary Assessment and Stabilization, a parent/guardian can initiate Alternative Admission for Minors to a JARF. An Emergency Admission of an adult however can only be initiated by a physician, spouse, guardian, relative or other responsible adult, but it requires the certification of a physician. Without the written accompanying certification of a physician containing the required elements, an emergency admission under the Marchman Act wouldn't be valid.

Once admitted under the Marchman Act, an LCSW is one of the professionals statutorily defined as a “Qualified Professional” to approve the person’s release or to provide an assessment to the court as part of a petition for involuntary treatment.

Provisions under the Baker Act are entirely different than those under the Marchman Act. The only thing in common is the federal EMTALA law that recognizes psychiatric and substance abuse emergencies as emergency medical conditions even absent any other medical conditions.

Q. I have an LCSW working for me who is refusing to Baker Act suicidal students. He is calling for another LCSW or law enforcement to assess. My question for you is what is his obligation under the law to Baker Act a person he determines to be harmful to self as an LCSW?

The Baker Act doesn't place a duty on a mental health professional or a judge to initiate an involuntary examination as it does for a law enforcement officer.

394.463 Involuntary examination.--

(2) INVOLUNTARY EXAMINATION.--

(a) An involuntary examination may be initiated by any one of the following means:

1. A court **may** enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination.
2. A law enforcement officer **shall** take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker **may** execute a certificate stating that he or she has **examined a person within the preceding 48 hours** and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

The case law on this issue is consistent in supporting that a mental health professional has no duty to initiate such an examination. Further, the 48 hour delay that is permitted for a mental health professional sort of suggests that a professional may institute a "Safety Plan" to protect the well-being of the person in an attempt to use the least restrictive available and appropriate alternative.

I'm concerned that the Social Worker is calling on law enforcement or another mental health professional to do what he clearly believes is the appropriate intervention. Unless he is just seeking a "second opinion" prior to initiating, this makes no sense. Your standards established through a Social Workers Code of Ethics or through the School System may modify the minimum legal requirements found in the Baker Act.

Q. A question has come up on the hiring of new social workers on our locked psychiatric unit. Must the social worker be a LCSW or can they be a MSW, since they are working with the Baker Act, filing and court attendance?

Neither the Baker Act law nor rules specify the credentials of social workers in a hospital psychiatric unit. The only time the state's Baker Act law and rules require a social worker to be a LCSW is to initiate an involuntary examination and to carry out certain responsibilities under the involuntary outpatient placement provisions of the law. This might be subject to JCAHO standards instead. Your own hospital policies and procedures may also specify certain credentials.

Many hospitals have a Baker Act coordinator who takes care of all legal filings and coordination with court related personnel. Some of these staff have come up through the ranks and are not credentialed. Many hospitals have unlicensed social workers who do some clinical duties and concentrate heavily on discharge/aftercare planning, but are not credentialed.

Q. What are the "special training" requirements for LMHC's before they can sign an Involuntary Examination form?

A. There additional training beyond licensure is required for a LMHC. There are many training requirements in 65E-5 and 65E-12, but they aren't specific to individual professions or to the initiation of involuntary examinations. However, to make sure staff are best prepared to do the right thing, some web-based courses are now available.

Q. I am a LMHC and would like to know whether my license authorizes me to initiate an involuntary examination under the Baker Act?

As a licensed mental health counselor you will be able to begin initiating involuntary examinations under the Baker Act effective July 1, 2005. There are certain other functions in the Baker Act that can be performed by physicians, clinical psychologists, clinical social workers, and psychiatric nurses (all as defined in the Baker Act) that cannot be performed by a LMHC, unless the law is revised at some future time.

There are certain other functions allowed to physicians, psychologists, clinical social workers, and psychiatric nurses that are not extended to LMHC's. LMHC's were

excluded from the definition of service provider in the Baker Act and are not authorized to determine clinical appropriateness of proposed treatment plans for the purpose of involuntary outpatient placement.

Q. The other day a colleague indicated that there was a difference in either the standard or procedure for psychiatrists and the Baker Act and social workers and the Baker Act. Is this true? Or can you refer me to reference for clarification.

There are many provisions of the Baker Act, each provision authorizing differing professionals to act. If you are referring to the initiation of an involuntary examination, a circuit judge, a law enforcement officer, or specified mental health professionals are eligible. Those mental health professionals include physicians, psychiatrists, psychologists, psychiatric nurses, LCSW, LMHC, and LMFT. The criteria is identical regardless of which of the above is initiating the examination.

Once an examination has been "initiated" by one of the above, the exam must be "conducted" at a receiving facility or hospital. Only a physician (including psychiatrists) or a psychologist is qualified to conduct the examination. The release from a receiving facility after the involuntary examination has been conducted can only be authorized by a psychiatrist, psychologist, or if the receiving facility has an ER, the release can be authorized by an emergency physician.

Only a psychiatrist can file the 1st opinion for involuntary placement, after the involuntary examination has documented the more extensive criteria for placement are met. The 2nd opinion can be by a psychologist or another psychiatrist.

Q. I am a LCSW licensed by the state of Va, I practice as an Active Duty Military Clinical Social Worker in the state of Fl; I wanted to know if the state statutes in FL allow for me to baker act.

10 USC 1094(d) dealing with licensure of health care professionals in the armed forces allows a fully licensed health care professional to practice his/her profession in any state. This applies to a physician, dentist, clinical psychologist, marriage and family therapist, or nurse and any other person providing direct patient care as designated by the Secretary of Defense. If the Secretary of Defense has specifically designated social workers in addition to those designated in the Code, they would also be covered..

This permits specified health professionals to practice their profession wherever posted. However, it doesn't extend to other rights over and above the licensure that may have been authorized by the respective states to such professionals, such as initiating involuntary psychiatric examinations under the law.

The Florida AG (AGO 99-68 attached) has found that VA law enforcement officers are not authorized to initiate involuntary examinations or to provide primary transport to persons on involuntary examination status because they aren't certified by the state of Florida.

Florida's Baker Act specifically permits fully licensed physicians and clinical psychologists who are employed in VA hospitals in Florida to participate in all Baker Act

related functions in Florida, but is silent as to any other professionals. As a result, a LCSW licensed in another state would **not** be authorized to initiate an involuntary psychiatric examination in Florida. The Office of the Staff Judge Advocate may wish to obtain a Florida Attorney General opinion on the issue.

Veteran's Affairs

Q. Can our newly licensed FL psychologists, (who don't have 3 years of licensure yet), but are employed by at a VA hospital (which is not a treatment facility) initiate involuntary examinations? They are hired as psychologists with all the credentialing and privileging required for function as psychologists at this VA or any other VAMC.

The statutory definition provided in the Baker Act are as follows:

394.455 Definitions.

As used in this part, unless the context clearly requires otherwise, the term:
(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, **or** a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

As you can see, a clinical psychologist must have 3 years of post-doctoral experience to participate in any part of the Baker Act – this is one year more than what I believe is required in the Florida psychology statute. Since the Baker Act is the more specific (although archaic with some of the definitions), it prevails over the more general licensing statute. This definition also requires licensure in Florida and the three years of experience, unless the clinical psychologist is employed by a VA hospital. A VA clinic doesn't qualify as a receiving or treatment facility.

Q. We have three psychiatrists at our outpatient VA clinic, one of which is not licensed in Florida. Can he initiate an involuntary examination under the Baker Act? Where does it state that they have to be licensed in the state of Florida. Our clinic operates under a VA Medical Center which does receive people, although it is not the closest receiving facility to our clinic. All our voluntary patients go to the VA Medical Center, but the ones that are involuntary usually go locally. Could a person on a BA 52 be transported to the VA Medical Center since that is the closest VA Hospital?

Physicians and Psychiatrists are specifically defined in the Baker Act s.394.455, FS, as follows:

(21) "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

(24) "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

This means that any physician, including psychiatrists, must be licensed by the state of Florida in order to initiate involuntary examinations under the Baker Act with the exception of physicians who are employed at VA hospitals. Outpatient VA clinics wouldn't qualify as receiving or treatment facilities because they don't operate 24 hours a day, 7 days a week and don't provide inpatient services.

Your current procedure of sending your voluntary admissions to the VA Medical Center and your involuntary admissions to the nearest receiving facility is consistent with Florida law. However, as soon as the person is "accepted" at the local receiving facility, the veteran can be transferred from that local facility to the VA Medical Center under the Baker Act Transfer provisions (394.4685, FS)

Q. I work at a VA outpatient clinic. Our clinic is a satellite clinic of a VA hospital system. According to the "definitions of a professional", I see that a psychiatrist or physician, and a clinical psychologist employed by the VA "which qualifies as a receiving or treatment facility under this part", can initiate a Baker Act. The part that I am unclear about is the phrase "which qualifies as a receiving or treatment facility under this part". Currently, this outpatient clinic is not listed in receiving facilities nor is our parent system. Is it that these government facilities just "fall" under the category of a "receiving facility or treatment facility?", even though we transport our patients to a local hospital which is the nearest receiving facility? The reason this is significant is that many practitioners working in the VA are not licensed in Florida, therefore, we are limiting who we allow to initiate a Baker Act in this clinic to our LCWS's (w/ a FL license), and psychiatrists with a FL license to be safe.

You are correct in your assumption that mental health professionals licensed in other states who work at your VA outpatient clinic are not eligible to initiate involuntary examinations under the Baker Act.

The definition, as you note, limits reciprocity to out-of-state licensed practitioners to those working in a VA facility which qualifies as a receiving or treatment facility. This doesn't mean that the facility must actually be designated by the Florida DCF – only that it meets the criteria and would be designated if it submitted an application for designation. For example, Bay Pines VA is designated, but some others are not. The professionals working at any of those hospitals can initiate.

Since outpatient clinics can't meet the criteria of offering reception, admission, and emergency psychiatric treatment on a 24/7 basis, they can't qualify.

There is a federal law that governs **Department of Defense** employees, ensuring that they can practice their professions where ever they are posted. It is questionable whether this means that they can perform only those medical, psychological, dental, etc duties or whether they could also initiate involuntary examinations under the Baker Act. There is a Florida Attorney General opinion stating that VA law enforcement can not

either initiate involuntary examinations or provide initial transport because they are not certified law enforcement officers under Florida statutes.

Involuntary Examination and Placement

Q. Who is authorized to discharge a person on involuntary status?

Other than a circuit court judge, only the Administrator of a receiving or treatment facility has the authority to discharge a person on involuntary status once a psychiatrist or psychologist has determined the person to not meet involuntary placement criteria. A person held under the involuntary examination or involuntary placement cannot be removed AMA from a facility.

Q. We have a patient on Petition for Involuntary Placement whose hearing is set for several days from now. The doctor is not here today so our Nurse Practitioner will be seeing the patient. Can the Nurse Practitioner write an order transferring the patient to voluntary status?

No, the ARNP cannot write this order. Before a person can be transferred from involuntary to voluntary status, a physician must determine the patient is capable of making well-reasoned, willful and knowing decisions about his/her medical/mental health treatment. Once the physician has certified this (there is a form for this) and determined the patient doesn't meet involuntary inpatient / outpatient placement criteria, and the patient has applied for voluntary status, the physician can transfer the patient to voluntary status. It is assumed that the chart reflects that there has been an improvement in the patient's condition; not just that the hearing is approaching.

Q. Recently I heard that the 2nd opinion for an Involuntary Inpatient Petition for minors must be completed by a psychiatrist and that a licensed clinical psychologist is not qualified. Is this correct?

A. No. The Baker Act permits a clinical psychologist to conduct the second opinion for persons of any age. A number of hospital-based receiving facilities have internal policies and procedures that call for both opinions to be done by psychiatrists. Often, this is because they only have access to psychiatrists – not psychologists in these settings.

Crisis Stabilization Units

Q. Who is authorized to conduct the involuntary examination and who is authorized to approve the release of a person from a CSU?

Regarding your question as to who can conduct an examination and who can authorize release of a person from a CSU or CSSU, the following applies:

**394.463 Involuntary examination.
(2)INVOLUNTARY EXAMINATION.—**

(f)A patient shall be examined **by a physician or clinical psychologist** at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. **The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist**, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

(i)Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1.The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2.The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;

3.The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4.A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.

(3)NOTICE OF RELEASE.—Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

The above means that any physician can perform the examination and a psychologist can approve the child's release from involuntary status. The psychologist is not required to do a face-to-face; just to approve the release. Regarding voluntary admissions and release, the law provides the following:

394.4625 Voluntary admissions.

(2)DISCHARGE OF VOLUNTARY PATIENTS.—

(a)A facility shall discharge a voluntary patient:

1.Who has sufficiently improved so that retention in the facility is no longer desirable. A patient may also be discharged to the care of a community facility.

2.Who revokes consent to admission or requests discharge. A voluntary patient or a relative, friend, or attorney of the patient may request discharge either orally or in writing at any time following admission to the facility. The patient must be discharged within 24 hours of the request, unless the request is rescinded or the patient is transferred to involuntary status pursuant to this section. The 24-hour time period may be extended by a treatment facility when necessary for adequate discharge planning, but shall not exceed 3 days exclusive of weekends

and holidays. If the patient, or another on the patient's behalf, makes an oral request for discharge to a staff member, such request shall be immediately entered in the patient's clinical record. If the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the express and informed consent of the patient.

(b) A voluntary patient who has been admitted to a facility and who refuses to consent to or revokes consent to treatment shall be discharged within 24 hours after such refusal or revocation, unless transferred to involuntary status pursuant to this section or unless the refusal or revocation is freely and voluntarily rescinded by the patient.

(3) NOTICE OF RIGHT TO DISCHARGE.—At the time of admission and at least every 6 months thereafter, a voluntary patient shall be notified in writing of his or her right to apply for a discharge.

(4) TRANSFER TO VOLUNTARY STATUS.—An involuntary patient who applies to be transferred to voluntary status shall be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467 and continues to meet the criteria for involuntary placement. When transfer to voluntary status occurs, notice shall be given as provided in s. 394.4599. *[rule requires that the initial mandatory involuntary examination be completed before transfer to voluntary status and if patient is an adult, that a competency evaluation be completed as well by a physician]*

(5) TRANSFER TO INVOLUNTARY STATUS.—When a voluntary patient, or an authorized person on the patient's behalf, makes a request for discharge, the request for discharge, unless freely and voluntarily rescinded, must be communicated to a physician, clinical psychologist, or psychiatrist as quickly as possible, but not later than 12 hours after the request is made. If the patient meets the criteria for involuntary placement, the administrator of the facility must file with the court a petition for involuntary placement, within 2 court working days after the request for discharge is made. If the petition is not filed within 2 court working days, the patient shall be discharged. Pending the filing of the petition, the patient may be held and emergency treatment rendered in the least restrictive manner, upon the written order of a physician, if it is determined that such treatment is necessary for the safety of the patient or others.

As you can see, there is no statutory requirement for who is authorized to conduct an examination or approve the release of a child from voluntary status.

In addition to the statutory provisions above, the Florida Administrative Code governing minimum staffing standards CSU/CSSU is as follows:

65E-12.105 Minimum Staffing Standards.

(2)(a) Every CSU and SRT shall have at least one psychiatrist as primary medical coverage as defined in section 394.455(24), F.S. **Back-up coverage may be a physician who will consult with the psychiatrist. The psychiatrist or physician shall be on call 24-hours-a-day and will make daily rounds.**

Counties of less than 50,000 population may utilize a licensed physician for on-call activities and daily rounds as long as the physician has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders.

(b) The psychiatrist shall be responsible for the development of general medical policies, prescription of medications, and medical treatment of persons receiving

services. Each person shall be provided medical or psychiatric services as considered appropriate and such services shall be recorded by the physician or psychiatrist in the clinical record.

Nothing in the rule provision above requires that the CSSU psychiatrist be full time. He/she could be designated as a fraction of his/her time, shared with the adult CSU, with the pediatrician providing the primary coverage on the CSSU.

Q. Where would I find the regulation for medical director of a CSU and their required qualifications.?

The Baker Act law and rules don't specifically address the qualifications for a "medical Director" of a CSU. However, the 65E-12, FAC rules that address crisis stabilization units provide some direction, as follows:

65E-12.103 Definitions.

(12) "**Physician**" means a medical practitioner licensed pursuant to chapter 458, F.S., or chapter 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.

(13) "**Psychiatrist**" means a medical practitioner licensed pursuant to chapter 458, F.S., or chapter 459, F.S., who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

This means that any medical or osteopathic physician licensed in Florida meets the criteria for "physician" because they have all had some exposure (regardless of quantity or quality) to diagnosing and treating mental disorders in some setting. A psychiatrist isn't required to board eligible or board certified – just has to be a Florida licensed physician who has "primarily diagnosed and treated" mental disorders for at least three years.

The 65E-12 CSU rules have the following requirements:

65E-12.105 Minimum Staffing Standards.

(1) Each facility shall designate an individual who is responsible for the overall management and operation of a CSU or SRT and whose qualifications and duties are defined in the individual's job description. The job description shall ensure that other job responsibilities will not impede the operation and administration of the CSU or SRT. The occupant of this position shall possess experience in acute mental health and hold at least a bachelor's degree in the human services field or be a registered nurse.

(2)(a) Every CSU and SRT **shall have at least one psychiatrist as primary medical coverage** as defined in section 394.455(24), F.S. **Back-up coverage may be a physician who will consult with the psychiatrist. The psychiatrist or physician shall be on call 24-hours-a-day and will make daily rounds.**

Counties of less than 50,000 population may utilize a licensed physician for on-call activities and daily rounds as long as the physician has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders.

(b) The psychiatrist **shall be responsible for the development of general medical policies, prescription of medications, and medical treatment of**

persons receiving services. Each person shall be provided medical or psychiatric services as considered appropriate and such services shall be recorded by the physician or psychiatrist in the clinical record.

65E-12.107 Minimum Standards for Crisis Stabilization Units (CSUs).

(3) Medical Care.

(a) The **development of medical care policies and procedures shall be the responsibility of the psychiatrist or physician.** The policies and procedures for medical care shall include the procedures that may be initiated by a registered nurse in order to alleviate a life threatening situation. Medication or medical treatment shall be administered upon direct order from a physician or psychiatrist, and orders for medications and treatments shall be written and signed by the physician or psychiatrist.

(b) There shall be no standing orders for any medication used primarily for the treatment of mental illness.

(c) Every order given by telephone shall be received and recorded immediately only by a registered nurse with the physician's or psychiatrist's name, and signed by the physician or psychiatrist within 24 hours. Such telephone orders shall include a progress note that an order was made by telephone, the content of the order, justification, time and date.

There are additional rules that address the patients' needs and record documentation related to medical service, but they don't deal with your question of the qualifications.