

**OP. NO. 05-025**

**MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN  
GENERAL – ADMISSIONS.**

**Community services board petitioner in civil involuntary commitment proceeding may also prepare board's prescreening report for commitment hearing. In addition to prescreening report, independent examination is also required.**

Mr. Gregory S. Hancock  
Special Justice, 29<sup>th</sup> Judicial Circuit  
June 9, 2005

**Issue Presented**

You ask whether a civil commitment petitioner may also conduct the prescreening evaluation required under § 37.1-67.3(H), which relates to the involuntary commitment of persons with mental illness.

**Response**

It is my opinion that a community services board petitioner in a civil involuntary commitment proceeding may also prepare the prescreening report required of the board by § 37.1-67.3(H) for the civil commitment hearing. An independent examination is also required in addition to the prescreening report.

**Applicable Law and Discussion**

Section 37.1-67.1(B) permits a magistrate to issue a temporary detention order for a person who is mentally ill upon the "sworn petition of any responsible person." Once a temporary detention order is executed, a civil commitment hearing before a judge or special justice must be held within a 48-hour period.<sup>1</sup> Prior to the commitment hearing, § 37.1-67.3(G) requires an examination of the subject of the detention order by a psychiatrist or licensed psychologist, or if neither is available, a qualified, licensed mental health professional. Section 37.1-67.3(G) restricts the person performing the examination by specifying that:

The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the admission or treatment of the person, shall have no investment interest<sup>[2]</sup> in the hospital detaining or admitting the person under [Article 1], and, except for employees of state hospitals and of the U.S. Department of Veterans Affairs, shall not be employed by such hospital.

The examiner must state whether the subject person meets the commitment criteria and requires involuntary hospitalization or treatment.<sup>3</sup>

In addition to the examination required by § 37.1-67.3(G), before adjudicating a person mentally ill and ordering his commitment, § 37.1-67.3(H) directs the

judge, or special justice, to require a prescreening report from the community services board that serves the political subdivision where the subject person resides.<sup>4</sup> Section 37.1-67.3(H) requires that the prescreening report state whether the person meets the commitment criteria<sup>5</sup> and whether there are less restrictive alternatives to institutional confinement. The report must also provide recommendations regarding the person's care and treatment.<sup>6</sup>

Although the General Assembly has qualified who may serve as the examiner under § 37.1-67.3(G), similar qualifications were not placed upon the community services board representative preparing the prescreening report. In fact, § 37.1-67.3 contains no restrictions regarding who may fulfill the role of prescreener.<sup>7</sup> Thus, I must presume that the General Assembly did not intend to exclude a petitioner from the community services board from conducting the prescreening evaluation required by § 37.1-67.3(H).<sup>8</sup> The independent examiner provides the necessary objectivity.

Finally, it should be noted that prior to any commitment pursuant to § 37.1-67.3(G) as discussed above, a person must be examined by a psychiatrist or psychologist, or if neither is available, by a qualified, licensed health care professional.<sup>9</sup> Such examiner may not have an interest in the commitment or treatment of the person being evaluated.<sup>10</sup> Absent this examination, the person cannot be committed.<sup>11</sup>

### **Conclusion**

Accordingly, it is my opinion that a community services board petitioner in a civil involuntary commitment proceeding may also prepare the prescreening report required of the board by § 37.1-67.3(H) for the civil commitment hearing. An independent examination is also required in addition to the prescreening report.

<sup>1</sup>Va. Code Ann. § 37.1-67.3(A) (LexisNexis Supp. 2004).

<sup>2</sup>"For purposes of [§ 37.1-67.3], investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments." Section 37.1-67.3(G).

<sup>3</sup>*Id.*

<sup>4</sup>Where the subject person has been sentenced and committed to the Department of Corrections and has been examined by a psychiatrist or clinical psychologist, a judge, or special justice, may adjudicate the case without a prescreening report. See § 37.1-67.3(H).

<sup>5</sup>The person must be "so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment." Section 37.1-67.3(H).

<sup>6</sup>*Id.*

<sup>7</sup>Prior to the issuance of a temporary detention order pursuant to § 37.1-67.1, the magistrate must first obtain an "evaluation by an employee of the local

community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department [of Mental Health, Mental Retardation and Substance Abuse Services]." Section 37.1-67.1(B) (LexisNexis Supp. 2004). Section 37.1-67.1(A) defines a designee of a community services board "as an examiner able to provide an independent examination of the person who is not related by blood or marriage to the person, who has no financial interest in the admission or treatment of the person, who has no investment interest in the hospital detaining or admitting the person under [Article 1] and ..., who is not employed by such hospital." These restrictions are similar to those placed on an examiner under § 37.1-67.3(G), however, no such restrictions are placed upon a community services board employee performing an evaluation pursuant to § 37.1-67.1(B).

<sup>8</sup>When the General Assembly intends to enact a mandatory requirement, it, of course, knows how to express its intention. See, e.g., Op. Va. Att'y Gen.: 2003 at 147, 149; *id.* at 60, 61; 1998 at 87, 88.

<sup>9</sup>See § 37.1-67.3(G).

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

[Back to June 2005 Opinion Index](#)