

Direct Request For Temporary Detention Order By Physician

Facts:

A patient in a Virginia hospital is believed to be so mentally ill by the treating physician that he presents an imminent danger to himself. The local community services board representative is summoned to the hospital, where a face-to-face evaluation is performed. The local community services board representative does not agree and refuses to request the issuance of a temporary detention order.

What recourse, if any, does the physician have to detain the patient?

Discussion:

The hospital cannot hold the patient against his will without a court order.

The immunity provisions of Va. Code Ann. § 54.1-2400.1 do not apply to protect the physician from a claim of negligence, as that statute only applies to third party liability. See *Molchon v. Tyler*, 262 Va.175, 546 S.E.2d 691 (2001)(suicide); *Wackwitz v. Roy*, 244 Va. 60, 418 S.E.2d 861 (1992) (suicide).

The physician can request the issuance of a temporary detention order directly under the provisions of Va. Code Ann. § 37.1-67.1, *Involuntary temporary detention; issuance and execution of order*, which provides in pertinent part as follows:

....

A magistrate may, upon the sworn petition of any responsible person or upon his own motion, and only after an in-person 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, issue an order of temporary detention if it appears from all evidence readily available, including any recommendation from a physician treating the person or from a clinical psychologist treating the person, that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment. Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement.¹

[Note: The telephone number of the Richmond Magistrate as of August 11, 2002, is 804-646-6689.]

¹ Emphasis supplied.

A magistrate may issue such order of temporary detention without an emergency custody order proceeding. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been personally examined within the previous seventy-two hours 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 or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

The statute requires that the community services board “determine the facility of temporary detention for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order.” When the community services board representative declines to recommend the issuance of a temporary detention order, the statute is not clear whether the temporary detention order can order the patient to remain in the hospital where located.