

14 NYCRR Part 540
Express Terms

1. New subdivisions (b), (p) and (q) are added to Section 540.2 of Title 14 NYCRR as stated below. All other subdivisions in Section 540.2 remain as written and are re-lettered accordingly.

(b) *Certified psychologist* means a person who has been certified and registered to practice psychology in New York State pursuant to the education law.

(p) *Psychiatric examiner* means a qualified psychiatrist or a certified psychologist who has been designated by a director to examine a defendant pursuant to an order of examination. In facilities in which the director is not a physician, the director may delegate this authority to the deputy director for clinical services.

(q) *Qualified psychiatrist* means a physician who:

(i) is a diplomate of the American Board of Psychiatry and Neurology or is eligible to be certified by that board; or

(ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that board.

2. Subdivisions (b) and (c) of Section 540.8 are amended to read as follows:

(b) The clinical director may apply to the court for the return of a patient who is in the custody of the commissioner pursuant to a temporary order of observation, an order of commitment or an order of retention to the custody of the criminal court upon a finding that he is not an incapacitated person after consultation with the hospital forensic committee in accordance with the procedures described in section 540.9 of this Part, or after review and consideration of the report and recommendations of a [psychiatrist]

psychiatric examiner designated in accordance with the procedures described in subdivision (c) of this section.

(c) The clinical director shall have responsibility for deciding whether the patient remains an incapacitated person or is fit to stand trial.

(1) In exercising this responsibility, the clinical director may designate a [board-certified or board-eligible psychiatrist] psychiatric examiner who is employed at the facility to examine the patient. The [psychiatrist] psychiatric examiner so designated shall prepare a report in which he or she makes a recommendation to the clinical director.

(2) The clinical director shall review and consider the recommendations of the designated [psychiatrist] psychiatric examiner in making a determination of whether the patient remains an incapacitated person or is fit to stand trial. The clinical director is not required to follow such recommendations.

3. Subdivisions (b), (c) and (k) of Section 540.9 of Title 14 NYCRR are amended to read as follows:

(b) When the treatment team serving a patient is of the opinion that such patient is appropriate for escorted furlough, unescorted furlough, transfer, discharge, conditional release or conversion to civil status, it shall recommend to the unit chief that an application be made to the hospital forensic committee and the clinical director. When the treatment team serving a patient is of the opinion that such patient is appropriate for return to the custody of the criminal court, it shall recommend to the unit chief that an application be made to the hospital forensic committee or to the clinical director, if he or she has designated a [psychiatrist] psychiatric examiner in accordance with procedures

described in section 540.8(c) of this Part. The treatment team may act on its own initiative or at the patient's request.

(c) If the unit chief, after review of the case, agrees with the opinion of the treatment team, he or she and the team psychiatrist shall execute an application. Upon completion of the application, the unit chief shall forward it to the hospital forensic committee or to the clinical director, if he or she has designated a [psychiatrist] psychiatric examiner in accordance with the procedures described in section 540.8(c) of this Part.

(k)(1) The clinical director shall have responsibility for deciding whether to grant an application for the conversion to civil status, granting of furlough, discharge, or conditional release of a patient. In exercising such responsibility, he or shall review the recommendations of the hospital forensic committee. The clinical director need not follow such recommendations, but shall not take action contrary to the recommendation of a majority of the committee without first consulting with a clinician who is not employed at the facility.

(2) The clinical director shall have responsibility for deciding whether to grant an application for a return to court of a patient who is no longer an incapacitated person but against whom criminal charges remain pending. In exercising such responsibility, he or she shall:

- (i) review the recommendation of the hospital forensic committee if consultation is requested in accordance with section 540.8(b) of this Part. The clinical director is not required to follow such recommendations, but shall not take action contrary to the recommendation of a majority of the

committee without first consulting with a clinician who is not employed at the facility; or

- (ii) review the report and recommendations of the [psychiatrist] psychiatric examiner that he or she has designated in accordance with the procedures described in section 540.8(c) of this Part. The clinical director is not required to follow such recommendations.