

# INNOVATION ABOUT THE MEDICO-LEGAL PSYCHIATRICALY REPORT: THE REPORT REQUESTED BY PERSONS THAT INTEND TO PURSUE ACTS THAT HAVE AN ALIENATION VALUE

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**Abstract:** *The medico-legal psychiatrically report is the medico-legal examination that determines whether a person has a mental illness or not, or if in that illness the patient has discernment, in other words legal competence of performing. This type of report is usually performed at the solicitation of the Police, Prosecutor's Department or Court, through an ordinance. There are situations when the medico-legal psychiatrically report is performed at the request of a person that wants to perform acts that have an alienation value. In the present work, the authors present the methodology and peculiarities of this type of report that is requested medico-legal psychiatrically report.*

**Key words:** *requested medico-legal psychiatrically report, discernment, legal competence of performance.*

In general the acts that have an alienation value are notarial acts such as testaments, selling and buying contracts, donations, and maintenance contracts etc. They are all based on a transfer of ownership. Most often, those properties have a low or medium value, but in some situations we can have considerable fortunes (houses, lands, important amount of money, etc.).

Most often, the person that intends to pursue such acts is an elder, a widow or widower that has to decide about the goods for their lifetime, and especially what would happen after one's death. For eliminating doubts regarding the legal competence of performing or the discernment, a person that has to conduct such an act of alienation can request a medico-legal psychiatrically report that would answer to that objective. For a better understanding of the medico-legal psychiatrically report, it is important to present a few legislative and methodological aspects. The medico-legal psychiatrically report is included in the reports category, reports that are being performed only if they are officially requested through an ordinance, by one of the three state institutions: Police, Prosecutor's Department and Court. This kind of reports are requested for criminal cases when it is examined a person that has committed a crime sanctioned by the Penal Code. Other medico-legal reports are requested for civil cases such as divorces, entrusting the minor children etc. Also, there are situations when a medico-legal psychiatrically report is solicited in the case of a deceased person that during its lifetime has performed acts of alienation that were soon after disputed because of the lack of discernment of the person, due to a disease. This is the case of the medico-legal psychiatrically report on documents. As we already stated, to these three types of reports it is added the requested medico-legal psychiatrically report, that is used on live persons that solicit to be examined so they can prove that they have discernment when performing an act of alienation. In other words, these persons want to "protect" the notarial act with a medico-legal document that would attest during lifetime and also after death that the person had discernment when the act was performed and signed.

Methodologically, this act is called “health condition certificate” because it is not officially requested by the Police, Prosecutor’s Office or Court of law, but its content is identical to a medico-legal psychiatrically report and is performed according to the rules that guide this kind of report. The commission is formed by one forensic expert, two psychiatrists and a psychologist that performs the psychological exam, also other doctors according to the diseases that the examined person presents. All these doctors are written on the medico-legal document that is given to the examined person. This health condition certificate, a genuine expertise, is performed only after the person requesting it, writes a petition to the Medico-Legal Department, motivating its request of the document.

This kind of medico-legal report was rarely requested before 1990. In a district like ours, there were no more than 10 requests in a year. Nowadays, things have changed because the term of private property is truly respected, and even mentioned in the country’s Constitutions. Nevertheless, not only that it is respected by the law, but people’s mentality regarding the private property, has changed; it has to be constituted, preserved and ceded so that it would create malfunctions neither for the owner, nor for the one receiving it.

The number of these kinds of reports has grown within every year; one of the contributing factors is the growing number of owners.

These days, there is an emancipation of the population juridical speaking, mainly because people understand that a smaller or bigger fortune, achieved through hard work and sacrifice, must be respected during lifetime, and after death transmitted to family members or state institutions that deserve it. Arguments arise between potential successors when real values are involved, and those that feel left out dispute in any way the most common notarial act, motivating that the person that performed and signed the act had a lack of discernment due to an illness. As we stated, the dynamic of this kind of report has been impressive during the past 20 years. There was a slow growth of this type of report at the beginning of the 1990’s, but starting with the year 2000 the number has increased tending to equalise the number of the reports officially solicited in penal and civil cases.

Compared to the other types of medico-legal psychiatrically reports, the requested medico-legal psychiatrically report has some peculiarities. First of all, the correct term that we have to refer to, is not the discernment, but the legal competence of performing. It is preferable to use the term discernment or the lack of discernment only for medico-legal psychiatrically reports in penal cases. In these cases, we have to assess the discernment strictly referring to the moment of the crime for which the person is investigated. The legal competence of performing is part of the global psychic competence, which has connections with the extensive term of discernment. In practice, the persons that have a lost discernment are considered to have neither psychic competence, nor legal competence of performing. Nevertheless, there are exceptions: a person that has a serious mental illness like schizophrenia, does not have discernment, but under treatment, on a level of improvement might have legal competence of performing. Most often, the persons that have diminished discernment because of a mental illness don’t have legal competence of performing. The psychological tests and examinations that are done on people that solicit this kind of report must show the physiological deterioration value. Because we work with old or very old people (over 70 or 80 years), it must be taken in consideration the multiple chronicle affections that they present, and that can directly or indirectly influence their legal competence of performing. Such situations could be: diabetes and its complications (cecily, diabetic arteriopathy, etc.), neurological conditions like vascular cerebral stroke, Parkinson or Alzheimer disease, ophthalmological conditions with sight disorders, the otolaryngology conditions (deafness). Through their symptomatology, all these conditions and especially their consequences, that is often invalidity, can influence a person’s legal competence of performing. All of the above state that it is very difficult, but extremely important to perform a medico-legal psychiatrically report on one of these persons.

We realised the utility of these acts when performing medico-legal psychiatrically reports on documents for which we received large files filled with this kind of acts. They talked about the situation when some of the potential successors contest the notarial act performed by the deceased, motivating the lack of discernment or the lack of legal competence of performing of the one that

performed the act. The successors argue and try to prove with medical entries that the deceased was too sick to have discernment at the time the notarial act was performed. Most often are presented hospital release records, copies of clinical observation charts, prescriptions, medical records, invalidity certificates, labour ability decisions. From these acts we remember that the person was suffering of cancer and had metastasis, or was paralysed, not talking, was an alcohol consumer or any other clinical condition. There are very few medical records to truly result from, that the discernment was affected because of the person's severe mental disorders. The great difficulty of such a report is that the person cannot be psychiatrically examined because is dead for some time. The report can be easily performed by just repeating the conclusions if found in the person's file a requested medico-legal psychiatrically report that was done directly on the person while still alive, report that shows that at the time of examination the person had legal competence of performing. The notary public has an important role for the performance of the report. Being solicited by elderly persons to perform alienation acts, they are the first that might have doubts regarding the legal competence of performance of that person. Before performing the notarial act, a good faith notary would suggest the client to have a medico-legal psychiatrically report performed. Knowing the legal importance and as a conclusion to all the above, we plead for the growth of the number of this medico-legal psychiatrically report. Within legal boundaries the reports can be better performed, for example it can be subject to the law that each person that has a mental disorder or has over 70 years must go thru a medico-legal psychiatrically report before performing an alienation value notarial act. Through laws that allow the preservation and the transfer of ownership, our legislation would be line up with the legislation in many European countries that respect the private property.

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