

Committee Opinion  
January 19, 1988

**UPL Opinion No. 113.**  
**Non-Lawyer B Practice Before State Administrative Agencies.**

No person may commence a medical care facility project without first obtaining a Certificate of Public Need from the Commissioner of Virginia State Health Department. Virginia Code § 32.1-102.1 *et seq.* Furthermore, § 32.1-102.6(E) provides for the conduct of informal fact-finding conferences in accordance with the provisions of the Virginia Administrative Process Act (APA), Va. Code § 9-6.14:1 *et seq.*, in order to determine whether a public need exists for a medical health care facility. Va. Code § 9-6.14:11, “*Informal fact-finding*,” of the APA provides that parties to administrative informal fact-finding proceedings have the right to appear in person or by counsel or *other qualified representative* for the purpose of informally presenting factual data, argument or proof in connection with any case.

Generally, a non-lawyer with or without compensation, shall not represent the interests of another before a tribunal otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions. *See* Va. Sup. Ct. R. Pt. 6, Sec. I, UPR 1-101(A). *See also* Va. Sup. Ct. R. Pt. 6, Sec. I, UPR 1(A)(3), “Definition of the practice of law.” Va. Sup. Ct. R. Pt. 6, Sec. I, UPR 9-102(A)(2), “Administrative Agency Practice,” provides in part that a non-lawyer shall not furnish to another for compensation, direct or indirect, advice or service under circumstances which require his use of legal knowledge or skill and the application of any law, federal, state, or local, or administrative regulation or ruling, except “as permitted by the rules of such agencies and reasonably within the scope of his practice as authorized by such agency.”

Based upon the foregoing statutes and unauthorized practice of law rules, it is our opinion that a non-lawyer may participate in informal fact-finding conferences, pursuant to Va. Code § 32.1-102.6(E) and Va. Code § 9-6.14:11, provided the non-lawyer presents only facts, figures or factual conclusions as distinguished from legal conclusions. Va. Sup. Ct. R. Pt. 6, Sec. I, UPR 1-101(A); Va. Sup. Ct. R. Par 6, Sec. I, UPR 9-102(A)(2).

It is further our conclusion that the informal fact-finding proceeding provided for by Va. Code § 32.1-102.2(E) is not a proceeding before a “tribunal” because Va. Code § 9-6.14:11 specifically authorizes the practice or appearance of a non-lawyer at such administrative informal fact-finding conferences. *See* Va. Sup. Ct. R. Pt. 6, Sec. I, UPC 1-1 (stating that the term “tribunal” does not include “a tribunal established under the Constitution or the laws of Virginia before which the practice or appearance by a non-lawyer on behalf of another is *authorized by statute.*”)

If the non-lawyer is presenting conclusions of law, then that, of course, would distinguish the situation and may be different. However, as a practical matter, if an out-of-state lawyer is appearing with a lawyer authorized to practice law in Virginia, I think he could appear on a *pro hac vice* basis. This happens frequently in courts throughout the Commonwealth if there is a Virginia lawyer sitting in as local counsel, especially in Federal courts. Therefore, if you are with the lawyer and you are a licensed Virginia lawyer, I think it certainly should be no problem. Of course, this may be up to the hearing officer.

Under the factual situation as presented to us, we would not think that this would constitute the unauthorized practice of law by a non-lawyer under these circumstances.