

OPINION NO. 82-067**Syllabus:**

A community mental health board has no authority, pursuant to R.C. 340.03, over mental health agencies operating within the board's district absent a contract with such agency or the provision of public funds to such agency, and need not include such agencies in the annual report required to be prepared pursuant to R.C. 340.03(I). However, a community mental health board must take into account the services provided to the district by a mental health agency that neither has a contract with the board nor receives public money when the board makes comprehensive plans for the provision of mental health services pursuant to R.C. 340.03.

To: R. Larry Schnelder, Union County Prosecuting Attorney, Marysville, Ohio
By: William J. Brown, Attorney General, September 28, 1982

I have before me your request for my opinion regarding the duties of a community mental health board which arise under R.C. 340.03. In particular, you ask:

1. What is the role and responsibility of the community mental health board if there are other agencies within the community mental health district that are also providing services with or without support from state and federal funding sources such as Medicaid and Medicare?
2. Assuming the other noncontracting agencies that are providing services are in the opinion of the community mental health board not in keeping with a community plan for coordinated services under Ohio Revised Code Section 340.03(A)(1), (2) and (3) what authority [or] responsibility does the board have about such programs?
3. What is the responsibility of the community mental health board under Ohio Revised Code Section 340.03(I) for "programs under the jurisdiction of the board, including a fiscal accounting". Is it necessary for the annual report of the programs under the jurisdiction of the board [to] include any mental health services being provided within the community mental health board's service district including those services that, in the opinion of the board, may not be in keeping with the community plan or are mental health services being rendered by other noncontracting agencies?

To begin, it is necessary to recall the long standing rule of law in Ohio that an administrative board has only that power conferred on it by statute or the Constitution. Burger v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); State v. Industrial Commission, 154 Ohio St. 497, 96 N.E.2d 593 (1951); State ex rel. Williams v. Glander, 148 Ohio St. 188, 74 N.E.2d 82 (1947). Therefore, any power enjoyed by a

community mental health board would have to be based on the Constitution or a specific section of the Revised Code.

R.C. 340.03 sets out the general duties of a community mental health board. Such a board appears to have certain duties with regard to all mental health agencies within its community mental health district, regardless of the agency's source of funding, and certain other duties specifically with regard to mental health agencies that receive public funds.

R.C. 340.03 places upon a community mental health board a duty to gather information and make plans regarding the provision of mental health services within its district, apparently taking into consideration all mental health agencies providing such service regardless of the source of any particular agency's funding. A community mental health board is directed to assess community needs for mental health services and develop plans to meet those needs, R.C. 340.03(A)(2); to develop and submit to the Department of Mental Health an annual plan listing the needs of residents of the district and programs or facilities which exist to meet such needs, R.C. 340.03(A)(3); to "[p]romote, arrange, and implement working agreements with social agencies, both public and private, and with judicial agencies," R.C. 340.03(A)(5); and finally to "[r]ecruit and promote local financial support for mental health programs from private and public sources," R.C. 340.03(F).

With regard to mental health agencies which receive public funds, R.C. 340.03 places certain administrative duties upon a community mental health board. A community mental health board is required to "[e]valuate the need for programs and facilities for which state or federal aid for mental health purposes is requested and local planning action is required and submit its findings and recommendations to the appropriate local, regional, state, or federal agency," R.C. 340.03(A)(1); "[r]eceive, compile, and transmit to the department of mental health applications for state reimbursement," R.C. 340.03(A)(4); "[a]pprove salary schedules for employees in agencies and facilities operated in whole or in part by or under contract with the board and whose salaries are paid in whole or in part from funds provided by the board," R.C. 340.03(C); "[r]eview and evaluate and conduct program audits for community mental health services and facilities seeking federal, state, or board assistance, and submit its findings and recommendations to the division of mental health facilities and services or other appropriate agency," R.C. 340.03(D); and finally "[s]ubmit to the chief of the division of mental health facilities and services and the county commissioners of the county or counties served by the board, and make available to the public, an annual report of the programs under the jurisdiction of the board, including a fiscal accounting," R.C. 340.03(I).

Thus, in response to your first question, the role and responsibility of a community mental health board, pursuant to R.C. 340.03, is to plan for the provision of mental health services taking into account services provided by all mental health agencies operating within its district, and to collect specified information from, and evaluate and make recommendations concerning, mental health agencies which receive public funds, and transmit such information and recommendations to the Department of Mental Health and other governmental agencies.

In response to your second question, I assume the noncontracting mental health agencies which are providing services not in keeping with the plan established by the community mental health board receive no funds through the board. While R.C. 340.03(A) makes it the responsibility of the community mental health board to provide planning for the provision of services, it is silent with regard to what powers such board has over an independent provider of mental health services that varies from the board's plan. As no power is provided to the board by the Revised Code, the board has no authority over such independent providers. Its only response when such a provider varies from the plan is to amend the plan indicating the new need which arises in the district due to the noncompliance of the independent provider. A community mental health board has no authority under R.C. 340.03 to force a provider of mental health services, which

does not have a contract with the board and receives no funds through the board, to comply with the board's community plan.

In response to your final question, it is necessary to consider R.C. 340.03(I) which requires the community mental health board to "[s]ubmit to the chief of the division of mental health facilities and services and the county commissioners of the county or counties served by the board, and make available to the public, an annual report of the programs under the jurisdiction of the board, including a fiscal accounting." The term "jurisdiction" is undefined for the purposes of R.C. Chapter 340. Consequently, it is necessary to consider the term's plain meaning. Swetland v. Miles, 101 Ohio St. 501, 130 N.E.2d 22 (1920). The term "jurisdiction" is defined as "the range or sphere of authority." New World Dictionary, 766 (2nd ed. 1976). As I noted in response to your second question, a community mental health board enjoys no authority with regard to noncontracting mental health agencies that receive no public funds. Thus, such mental health agencies are not within the jurisdiction of a community mental health board for the purpose of R.C. 340.03(I). In response to your final question, R.C. 340.03(I) requires a community mental health board to provide to the chief of the division of mental health and the board of county commissioners a report, including a fiscal audit, on mental health agencies within the district that receive public funds or have entered into contracts with the board, but not of agencies that neither receive such funds nor have entered into such contracts.

Based on the foregoing analysis, it is my opinion, and you are advised, that a community mental health board has no authority, pursuant to R.C. 340.03, over mental health agencies operating within the board's district absent a contract with such agency or the provision of public funds to such agency, and need not include such agencies in the annual report required to be prepared pursuant to R.C. 340.03(I). However, a community mental health board must take into account the services provided to the district by a mental health agency that neither has a contract with the board nor receives public money when the board makes comprehensive plans for the provision of mental health services pursuant to R.C. 340.03.