

1984 S.C. Op. Atty. Gen. 202 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-82, 1984 WL 159889

Office of the Attorney General

State of South Carolina

Opinion No. 84-82

July 24, 1984

\*1 Dr. William S. Hall  
Commissioner  
S. C. Department of Mental Health  
P. O. Box 485  
Columbia, SC 29202

Dear Dr. Hall:

In your request for the advice of this Office concerning the procedure to be followed by your Department when a voluntarily admitted patient leaves your facilities without permission you have presented the following questions:

1. Whether it is permissible for Department of Mental Health Campus Police to apprehend voluntary patients who have left campus without permission and to return them to the hospital against their will in situations when the patient (a) is in imminent danger; and (b) is in no immediate jeopardy.
2. If the restraint is permissible, what procedure should be followed and what the parameters of the restraint should be.

Is is the advice of this Office that one of the two (2) statutorily prescribed methods outlined in § 44-17-430 and § 44-17-410 should be followed in handling the departure, without permission, of voluntary patients. While these procedures may seem cumbersome, to follow any other course of conduct could unnecessarily subject the Department and its employees to civil liability for false imprisonment and even possibly assault and battery.

The common law principle is that an insane person may be arrested and detained without an adjudication of his sanity to prevent either self destruction or injury to other persons. However, unless a person is dangerous to himself or others, the mere fact that he is insane does not authorize his commitment without a warrant or other judicial process. He may be detained without legal process on the ground of insanity when the surrounding circumstances and facts in the case show a reasonable necessity for such action. 41 Am.Jur.2d, Incompetent Persons, § 38.

This State has, by statute, dealt with these principles and, therefore, the statute should be followed.

Section 44-17-310 and § 44-17-330 are the provisions which govern a voluntary patient's admittance and discharge. This Office has issued its previous opinion, dated November 29, 1973, wherein it advised that if a need arises to retain a particular patient who was admitted on a voluntary procedure, then the appropriate judicial admission proceedings should be followed.

The legislature, in substantially rewriting § 44-17-870, South Carolina Code of Laws (1976), as amended, specifically provided a procedure for the recommitment of involuntarily committed patients. Implicit in the statute prior to the amendment was its application to involuntarily committed patients because of the use of the word 'confinement'.

In addition, § 44-17-865, as amended, provides for the procedure whereby the Department is to notify law enforcement officials of patients absent without proper authorization. This statute specifically refers to involuntarily committed patients.

There does not seem to be anything to prevent campus police from discussing with a voluntary patient his voluntary return and the completion of the appropriate request for discharge pursuant to § 44-17-330. If the patient refuses to return voluntarily and there is no danger to the person or of injury to that person or others, then detention and restraint would not be warranted.

\*2 In [Ellis v. United States](#), 484 F.Supp. 4 (1978), a Federal District Court case out of Charleston, the Court recognized that a voluntary patient in a Veterans' Administration Hospital was at liberty to leave the Hospital at any time, as the provisions of § 44-17-410 were not met for an involuntary commitment of the patient.

In conclusion, it is the advice of this Office that when a voluntary patient leaves one of your institutions without prior permission and the institution feels that further treatment is necessary, the provisions of § 44-17-410 be complied with and if an emergency situation where your institution feels that there is danger of imminent harm to the patient or to others, § 44-17-430 should be complied with.

Very truly yours,

Ruby Brice McClain  
Assistant Attorney General

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