

1983 S.C. Op. Atty. Gen. 77 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-52, 1983 WL 142723

Office of the Attorney General

State of South Carolina

Opinion No. 83-52

July 28, 1983

\*1 Charles E. Lee

Director

S.C. Department of Archives and History

1430 Senate Street

Columbia, South Carolina 29201

Dear Mr. Lee:

You have requested an opinion as to what, if any, confidentiality restrictions would apply to various patient records of the Department of Mental Health from the 19th and early 20th centuries, if such records were to be transferred to the Department of Archives and History.

The basic statute on confidentiality of mental health records, [§ 44-23-1090, 1976 Code of Laws of South Carolina](#), was first enacted in 1952. It contains no language which suggests that it in any way was intended to apply prior to the date of its enactment. Accordingly, the only protection which might conceivably apply to pre-1952 patient records would be the common law of privacy; in actuality, the point does not appear to have been the subject of much if any litigation during the years before the states enacted confidentiality statutes. The common-law right of privacy is personal to the individual and does not survive his death. The Archives Department has proposed to retain the confidentiality of records which are less than 75 years old. Since this period appears to be reasonably long, and would in all likelihood prevent the release of records of any living person, it is the opinion of this office that no provision of state law would be violated by permitting public access to individual patient records which are over 75 years old.

Sincerely yours,

Kenneth P. Woodington

Senior Assistant Attorney General

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