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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

February 9, 2004

Mr. C. Talmadge Tobias, Jr.
Sumter City Manager
P.O. Box 1449
Sumter, South Carolina 29151

The Honorable Thomas R. Mims
Sumter County Sheriff
107 E. Hampton Avenue
Sumter, South Carolina 29150

Dear Mr. Tobias and Sheriff Mims:

In a letter to this Office, you have requested an opinion "... on involuntary commitments (Title 44 of the South Carolina Code of Laws) and the role of Law Enforcement in the transfer to State mental health facilities of persons currently admitted to a local hospital and/or currently receiving care ('not admitted') at a local hospital." Specifically, you present the following questions for review:

1. Was it the intent of the South Carolina Legislature for emergency involuntary commitment without judicial proceedings (South Carolina Code Sections 44-17-410, 44-17-430, 44-17-440 (2002)) to be implemented when a person voluntarily comes to a local hospital seeking mental health treatment?

2. Was it the intent of the South Carolina Legislature for emergency involuntary commitment without judicial proceedings (South Carolina Code Sections 44-17-410, 44-17-430, 44-17-440 (2002)) to be implemented when a person is not "acting out" or showing other outward signs of being likely to cause serious harm to himself or others?

3. Was it the intent of the South Carolina Legislature for emergency involuntary commitment without judicial proceedings (South Carolina Code Sections 44-17-410, 44-17-430, 44-17-440 (2002)) to be implemented for the primary purpose of transferring to a state mental health facility a private hospital patient who is indigent or has no medical insurance coverage?

4. Was it the intent of the South Carolina Legislature for emergency involuntary commitment without judicial proceedings (South Carolina Code Sections 44-17-410, 44-17-430, 44-17-440 (2002)) to be implemented for the primary purpose of transferring to a state mental health facility a private hospital patient who, after receiving treatment at a private hospital, has exhausted his medical insurance benefits?

5. South Carolina Code Section 44-17-410(2) (2002) states "a person for whom a certificate has been issued may not be admitted on the basis of that certification after the expiration of three calendar days after the date of the examination." South Carolina Code Section 44-17-440 (2002) states "[n]o person may be taken into custody after the expiration of three days from the date of certification." Does the absence of adequate "bed space" at State mental health facilities allow local hospitals and local law enforcement to disregard these statutory requirements?

6. Does South Carolina Code Section 44-17-440 (2002) authorize law enforcement to transport pursuant to an involuntary commitment certification (without judicial proceeding) persons who are currently admitted to a local hospital and/or currently receiving care ("not admitted") when the date transport is requested is more than three days after the date of the person's hospitalization and/or the date of the involuntary commitment certification?

7. Where the original emergency involuntary commitment is more than three days old, is it permissible under South Carolina Code Section 44-17-410 (2002) for the hospital to recertify patients for emergency involuntary commitment without benefit of judicial proceeding?

8. Where the standard practice of a hospital is to transfer patients to a new facility by ambulance, does South Carolina Code Section 44-17-440 (2002) require law enforcement to transport a person who is being transferred to a State mental health facility?

9. Where the treating hospital elects not to transfer a mental health patient by ambulance, must law enforcement be involved when the hospital has a full-time security staff certified by SLED?

10. When a patient has received in-patient treatment for a medical or mental health condition, is it permissible for the treating hospital to discharge the patient and immediately issue an emergency involuntary commitment certificate requiring law enforcement to transport the patient? Is law enforcement required to transport when the discharged patient appears to

have a medical need or has injuries that may be exacerbated by handcuffing or other police procedures?

11. Where the transfer to a State mental health facility results in the patient being moved from a less restricted facility to a substantially more secure facility is it permissible pursuant to South Carolina Code Section 44-23-210 (2002) to deny the patient a hearing to give the patient a reasonable opportunity to contest the transfer?

12. While South Carolina Code Section 44-17-440 (2002) provides that a law enforcement officer "acting in accordance with this article is immune from civil liability," South Carolina Code Section 44-23-240 (2002) states "any person who willfully causes ... or assists another to cause the unwarranted confinement of any individual under the provisions of ... Chapter 17" is guilty of a Class C misdemeanor. Where law enforcement knows an emergency involuntary commitment certification is more than three days old, knows no judicial proceedings have occurred, or witnesses no "acting out" or other outward signs of being likely to cause serious harm to himself or others, is it permissible for law enforcement to take a person into custody and transport said person for emergency involuntary commitment without judicial proceedings?

The Tuomey Health Care System of Sumter ("the Hospital) and its legal counsel have also submitted letters to this Office in regards to the transport problems. They have stated their view that the involuntary commitment statutes require local law enforcement officers to transport those committed from the hospital to the appropriate mental health center. The Hospital has stated that it has never provided involuntary commitment psychiatric services, and that it only holds those in need of involuntary commitment until a bed becomes available. The Hospital further indicates that the problem of bed availability at local mental health facilities is the sole cause of the time delay between the certification and transport of the patient to the appropriate facility. You have noted that you are aware of the bed shortage problem, but you have concerns regarding potential violations of citizens' rights and the potential of involving Sumter in litigation as a result of any actions taken by local law enforcement.

Law/Analysis

As a preliminary matter, we should note that this Office has issued prior opinions which indicate some of the practical problems caused by the involuntary commitment statutes for both local health care facilities and local law enforcement. See Op. S.C. Atty. Gen., dated January 17, 1996; July 3, 1996. We recognize that the statutes may need to be amended by the General Assembly to reconcile the bed shortage problem in the mental health facilities with the short time period allowed for emergency commitment. We are aware of no provision in the Code that addresses the housing

of a patient certified under the emergency commitment statutes in the event of a bed shortage. However, we will attempt to apply the statutes as currently written in order to clarify the duties and responsibilities of both the Hospital and law enforcement when such a situation occurs.

This opinion is not intended as commenting on any particular factual situation that may have arisen or may arise in the future. Each situation would depend upon its own state of facts and the result may vary dependent on the factual situation involved. Only a court could resolve questions arising from specific facts and circumstances. Moreover, it should be stressed that cooperation between the law enforcement agencies and the hospitals involved should be sought to ensure that proper care is provided those individuals addressed in your letter.

South Carolina's emergency commitment procedures for the mentally ill are set forth at S.C. Code Ann. Secs. 44-17-410 through 460. Section 44-17- 410 provides for the emergency commitment of a person believed to be mentally ill who because of this condition is "likely to cause serious harm to himself or others if not immediately hospitalized." Such emergency hospitalization is based upon a written affidavit under oath of a person stating his belief of mental illness and dangerousness, as well as certification by a licensed physician stating that he has examined the patient and found him to be mentally ill, and as a result of such mental illness is likely to cause serious harm to himself or others. If the patient cannot be examined because "the person's whereabouts are unknown or for any other reason", Section 44-17-430 authorizes the petitioner seeking commitment of the person pursuant to Section 44-17- 410 to execute an affidavit "stating a belief that the individual is mentally ill and because of this condition likely to cause serious harm if not hospitalized, the ground for this belief and that the usual procedure for examination cannot be followed and the reason why." Then, "[u]pon presentation of an affidavit, the judge of probate for the county in which the individual is present may require a state or local law enforcement officer to take the individual into custody for a period not exceeding twenty-four hours during which detention the person must be examined by at least one licensed physician as provided for in Section 44-17-410(2)."

Section 44-17-440 provides the procedure for transportation of the patient for treatment once he has been examined by a licensed physician, and such physician has certified that he has examined the individual, and determined him to be mentally ill, likely to cause harm to himself or others if not immediately hospitalized. Section 44-17-440 provides as follows:

> [t]he certificate required by Section 44-17-410 must authorize and require a state or local law enforcement officer, preferably in civilian clothes, to take into custody and transport the person to the hospital designated by the certification. No person may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the mental health facility designated in the application, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend

> or relative freely chooses to assume that responsibility. A friend or relative who chooses to transport the patient is not entitled to reimbursement from the State for the cost of transportation. An officer acting in accordance with this article is immune from civil lability. Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.

Section 44-17-460 further requires the examining physician to consult with the local mental health center where the patient resides or the examination takes place "regarding the commitment/admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility."

In order to determine the meaning of these statutes when applied to your questions, reference must be had to basic rules of statutory construction. It is a cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). When statutes are clear and unambiguous, such terms must be applied according to their literal meaning. Anders v. S.C. Parole and Community Corr. Brd., 279 S.C. 206, 305 S.E.2d 229 (1983). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990).

In your first question you asked whether emergency involuntary commitment pursuant to Sections 44-17-410 is to be implemented when a person voluntarily comes to a local hospital seeking mental health treatment. In my opinion, such sections are not applicable to voluntary admissions. Voluntary admissions are covered by S.C. Code Ann. Sections 44-17-310 (2002). Pursuant to Section 44-17-310, if the judgment of the director of a state hospital is that an individual is the subject for voluntary admission to a state hospital, that person shall be so admitted. Of course, if the person presented would qualify for emergency admission pursuant to Section 44-17-410, then those procedures should be implemented.

You next asked whether emergency involuntary admissions are to be implemented when an individual is not "acting out" or showing other outward signs of being likely to cause serious harm to himself or others. As specified in Section 44-17-410, the procedures for emergency involuntary admissions are applicable following submission of an affidavit that there is a belief that the person is "mentally ill and because of this condition is likely to cause serious harm to himself or others if not immediately hospitalized". A physician must certify that the person is "mentally ill and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, or

personal injury, or otherwise, or to others if not immediately hospitalized." As stated in Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 578, 560 S.E.2d 624, 628-629 (Ct.App.2002),

> The clear language of...(Section 44-17-410)...requires more than a diagnosis of mental illness to justify the extreme measure of involuntary commitment. This accords with the general rule:
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> > A mental illness or disorder is not, alone, sufficient to justify a commitment, or deprivation of liberty or privacy. Individuals may not be civilly committed involuntarily or deprived of their liberty or privacy unless they pose a danger to themselves or to others, or are gravely or greatly disabled, and neglect, refuse, or are unable to care for themselves or to provide for their basic needs or to protect their lives or health. A state may not confine individuals involuntarily if they are dangerous to no one and capable of surviving safely in freedom alone or with the help of willing and responsible family members or friends.

Only a physician may make such a determination of mental illness and the mere fact that an individual is not "acting out" or showing other outward signs of being likely to cause serious injury to himself or others would not itself be the qualifying factors. Other symptoms may appear that would qualify for emergency admission.

In your third question, you asked whether it was the intent of the legislature that emergency involuntary commitment be implemented for the primary purpose of transferring to a state mental health facility a private hospital patient who is indigent or has no medical insurance coverage. As specified above, the requirements of Sections 44-17-410 et seq. are quite specific as to their applicability to individuals. Unless their requirements are met, such provisions are not to be utilized with regard to seeking hospitalization of a particular patient. The statutes do not comment as to their applicability to the situations addressed in your question regarding a status of indigency or lack of medical insurance. Such factors are therefore irrelevant in making a determination as to the applicability of Sections 44-17-410 et seq. in a particular situation.

You next asked whether it was the legislative intent that the procedures for emergency involuntary commitment be implemented for the primary purpose of transferring to a state mental facility a private hospital patient, who, after receiving treatment at a private hospital, has exhausted his medical insurance benefits. Again, as set forth in the third question, the provisions of Sections 44-17-410 are specific in their applicability and would not apply simply for the reasons stated in your question, such as exhaustion of medical insurance benefits.

As you point out in your letter, Section 44-17-410(2) states "a person for whom a certificate has been issued may not be admitted on the basis of that certificate after the expiration of three calendar days after the date of the examination." Section 44-17-440 (2002) states "[n]o person may

be taken into custody after the expiration of three days from the date of certification." Referencing these provisions regarding the three day limit as to admission to a designated mental health facility and the taking of an individual into custody, you asked whether the absence of adequate bed space at State mental health facilities allows local hospitals and local law enforcement to disregard these statutory requirements. You also asked whether law enforcement is authorized to transport pursuant to an involuntary commitment certification those persons who are currently admitted to a local hospital or are currently receiving care when the date of transport is more than three days after the date of the person's hospitalization or the date of the involuntary commitment certification.

This Office has consistently interpreted Sections 44-17-410 and 44-17-440 as imposing mandatory duties upon law enforcement officers. See: Op. Atty. Gen. dated March 19, 1981. Therefore, by these statutes, there is a duty on a peace officer to transport emergency patients who are hospitalized under the provisions of Sections 44-17-410 et seq. Once the certificate authorized by Section 44-17-410 is placed in the hands of the law enforcement officer, pursuant to Section 44-17-440, if such certification appears to the officer to be valid on its face, it is the officer's duty to execute it as soon as possible. See: Ops. Atty. Gen., November 12, 1986 and March 24, 1976. Therefore, it is the duty of the officer to carry out the certification as it appears on the face of the document. However, a certification which is out of date would arguably not be considered valid on its face. As a result, it appears that the process of certification must be reinitiated where there has been the expiration of the three day limit specified by Sections 44-17-410 and 44-17-440. The absence of adequate bed space at State mental health facilities does not on its own allow local hospitals and local law enforcement to disregard the referenced three day limit. Furthermore, law enforcement would not be obligated to transport pursuant to an involuntary commitment certificate those persons who are currently admitted to a local hospital or are currently receiving care when the date of transport is more than three days after the date of the person's hospitalization or the date of the involuntary commitment certificate. Legislative amendment could be sought in order to address concerns regarding problems caused by inadequate bed space

In your next question you asked whether in circumstances where the original emergency involuntary commitment is more than three days old is it permissible under Section 44-17-410 for the hospital to recertify patients for emergency involuntary commitment without benefit of judicial proceedings. Section 44-17-410 states that

> within forty-eight hours after admission, exclusive of Saturdays, Sundays, and legal holidays, the place of admission shall forward the affidavit and certification to the probate court of the county in which the person resides or, in extenuating circumstances, where the acts or conduct leading to the hospitalization occurred. Within forty-eight hours of receipt of the affidavit and certification exclusive of Saturdays, Sundays, and legal holidays, the court shall conduct preliminary review of all the evidence to determine if probable cause exists to continue emergency detention of the patient.

(emphasis added). As set forth, only upon admission to the particular facility shall the certification be forwarded to the probate court for review. Therefore, if the patient has not been admitted based upon certification under Section 44-17-410 within three days, the affidavit and certification would not have been forwarded to the probate court for review. As a result, I do not see where judicial proceedings come into play for purposes of recertification where there has not been an original admission pursuant to Section 44-17-410.

In circumstances where the standard practice of a hospital is to transfer patients to a new facility by ambulance, you question whether Section 44-17-440 requires law enforcement to transport a person who is being transferred to a State mental health facility. You also asked whether in such circumstances where the treating hospital elects not to transfer a mental health patient by ambulance, must law enforcement be involved when the hospital has a full time security staff certified by SLED. As referenced above, pursuant to Section 44-17-440 the certificate required by Section 44-17-410 "must authorize and require a state or local law enforcement officer...to take into custody and transport the person to the hospital designated by the certification." As specified in an opinion of this office dated January 17, 1996, once the certificate authorized by Section 44-17-410 is placed in the hands of the law enforcement officer pursuant to Section 44-17-440, if the certification appears to be valid on its face, it is the responsibility of the officer to execute it as soon as possible.

Options are provided for a friend or relative to transport the individual to the mental health facility where that friend or relative assumes the responsibility and signs a statement "which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation." Another option is provided for an alternative transportation program utilizing peer supporters and case managers for nonviolent persons requiring mental health treatment. Aside from these two options, it is clearly the responsibility of law enforcement to transport an individual to a mental health facility.

You next asked whether in circumstances when a patient has received in-patient treatment for a medical or mental health condition, is it permissible for the treating hospital to discharge the patient and immediately issue an emergency involuntary commitment certificate requiring law enforcement to transport the patient. The issuance of an emergency involuntary commitment certificate is governed by the provisions of Sections 44-17-410 et seq. If these provisions are applicable to a particular patient, they would control. The matter of whether the patient has already received in-patient treatment for a medical or mental health condition would appear to be irrelevant to the question.

You also asked whether law enforcement is required to transport when the discharged patient appears to have a medical need or has injuries that may be exacerbated by handcuffing or other police procedures. As set forth previously, the mandatory obligations of a law enforcement officer are specified by Section 44-17-440. See: Op. Atty. Gen. dated December 6, 1995. Of course, consideration must be given to the medical needs or injuries of a particular patient in the handling

of that patient but the statutory obligations of the law enforcement officer nevertheless remain. Obviously the manner or method of transport must be considered in light of the needs and conditions of the patient.

Where the transfer to a State mental health facility results in the patient being moved from a less restricted facility to a substantially more secure facility is it permissible pursuant to Section 44-23-210 to deny the patient a hearing to give the patient a reasonable opportunity to contest the transfer. Such provision states that

> A person confined in a state institution or a person confined in a state or private mental health or mental retardation facility may be transferred to another mental health or mental retardation facility if:
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> (1) the superintendent of a state institution not under the jurisdiction of the Department of Mental Health or the director of a treatment facility under the jurisdiction of the Department of Mental Health requests the admission of a person confined there to a state mental health facility if the person is suspected of being mentally ill. If after full examination by two designated examiners, one of whom must be a licensed physician, the director of the mental health facility is of the opinion that the person is mentally ill, the director shall notify the superintendent of the institution or the director of the facility to which the person was admitted who shall commence proceedings pursuant to Sections 44-17-510 through 44-17-610;
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> (2) the director of a facility in which the patient resides determines that it would be consistent with the medical needs of the person, the Department of Mental Health may transfer or authorize the transfer of the patient from one facility to another. If the transfer is from a less restricted facility to a substantially more secure facility and the patient objects to the transfer, a hearing to give the patient a reasonable opportunity to contest the transfer must be held pursuant to Sections 44-17-540 through 44-17-570. When a patient is transferred, written notice must be given to the patient's legal guardian, attorney, parents or spouse or, if none be known, to the patient's nearest known relative or friend. This section may not be construed to apply to transfers of a patient within a mental health facility; or
>
> (3) the legal guardian, parent, spouse, relative, or friend of an involuntary patient submits a request for the transfer of the patient from one facility to another and the reasons for desiring the transfer to the Department of Mental Health and unless the Department of Mental Health reasonably determines that it would be inconsistent with the medical needs of the person, the transfer must be made. If the transfer is from a less restricted to a substantially more secure facility, item (2) governs.

As set forth, where the transfer to a State mental health facility results in a patient being moved from a less restricted facility to a substantially more secure facility, a hearing to contest the transfer is required in the circumstances set forth by Section 44-23-210. Of course, for such provision to be applicable, a person must be "confined" to a state institution or a state or private mental health facility. Again, as indicated previously, this opinion is not intended to comment on any particular factual situation and each situation is dependent on its own state of facts.

In your final question you referenced that Section 44-17-440 provides that a law enforcement officer "acting in accordance with this article is immune from civil liability". S.C. Code Ann. Section 44-23-240 (2002) states that "any person who wilfully causes...or assists another to cause the unwarranted confinement of any individual under the provisions of ...Chapter 17" is guilty of a Class C misdemenor. Referencing such, you asked whether in circumstances where a law enforcement officer knows that an emergency involuntary commitment certification is more than three days old, knows no voluntary commitments have occurred, or witnesses no "acting out" or other outward signs of being likely to cause serious harm to himself or others, is it permissible for law enforcement to take a person into custody and transport such person for emergency involuntary commitment without judicial proceedings? Consistent with the responses set forth previously, an officer is obligated to execute an order valid on its face. However, if the order is questionable, such as where the three day time limit has expired, and where there is no indication of voluntary commitment, the validity of that order would be in question and therefore, the officer would not be obligated to carry out its requirements. The matter of whether or not a patient is acting out is irrelevant to the officer's obligations pursuant to an otherwise valid order.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

cc: Martha McElveen Horne, Esquire

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General