December 20, 2007

The Honorable Branna W. Williams
Judge of Probate
Barnwell County Probate Court
Barnwell County Courthouse
Barnwell, South Carolina 29812

Dear Judge Williams:

In a letter to this office you raised questions regarding mentally ill individuals who have been "committed but not admitted" meaning individuals who have been certified by a licensed physician to be in need of mental health treatment but who cannot be immediately transported and placed in a State mental health facility due to the shortage of available beds. You referenced the following scenario:

> An individual presents at the Barnwell Hospital ER either on his/her own or he/she is transported by law enforcement pursuant to a detention order. If brought by law enforcement pursuant to a detention order, law enforcement maintains custody of the individual and remains with the individual while waiting at the ER for an examination and during the examination. When the ER doctor examines the patient, if it is determined that the patient is not mentally ill, the patient is released immediately. If a doctor determines that the patient is mentally ill and in need of hospitalization, the doctor signs a Part II certification of licensed physician and the person is committed. At this point, the Department of Mental Health workers attempt to find a placement for the mentally ill person. Unfortunately, sometimes no placement can be found and the person is placed on a waiting list for admission to a DMH facility. In the meantime, the mentally ill person must be held at the hospital while a placement is pending–sometimes for days.

Referencing such, you have questioned who is responsible for maintaining custody and control over the individual and preventing him or her from walking out of the hospital and from harming himself or herself, hospital staff or other patients. You have questioned whether in such situation is law enforcement required to keep officers posted at the hospital or is hospital security responsible. If hospital security is responsible, does it have the authority to physically restrain someone and prevent

them from leaving the hospital. You alternatively questioned whether the State Department of Mental Health is responsible for providing security and protection for this individual since you state that involuntary commitment begins once the certification is signed.

You next questioned if it is determined that law enforcement is required to keep officers posted at the hospital, then which agency is responsible for providing the officers. You indicated that it has been you practice to issue detention orders to the agency having jurisdiction over the individual. You referenced the following scenario:

> If John Doe lives in the Town of Blackville, you issue a detention order and have Blackville PD serve the order on John Doe and take him to the hospital for examination. Then, Blackville PD would be responsible for transporting Doe to Columbia to the mental facility. Would Blackville PD also be responsible for holding Doe at the Barnwell Hospital ER if there was no bed available? Or would Barnwell PD have jurisdiction since the hospital is located within the Barnwell city limits? Or, in such situation, is the sheriff's department responsible?

S.C. Code Ann. §44-17-410 states that

> A person may be admitted to a public or private hospital, mental health clinic, or mental health facility for emergency admission upon:
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> (1) written affidavit under oath by a person stating:
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> (a) 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;
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> (b) the specific type of serious harm thought probable if the person is not immediately hospitalized and the factual basis for this belief;
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> (2) a certification in triplicate by at least one licensed physician stating that the physician has examined the person and is of the opinion 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. The certification must contain the grounds for the opinion. 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;
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> (3) 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. If the court finds that probable cause does not exist, it shall issue an order of release for the patient. Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued detention of the patient. With each affidavit and certification, the treatment facility shall provide the court with a designated examiner appointment form listing the names of two designated examiners at the treatment facility.

If the court appoints these two designated examiners, the examination must be performed at the treatment facility and a report must be submitted to the court within seven days from the date of admission. The court may appoint independent designated examiners who shall submit a report to the court within the time allotted above. In the process of examination by the designated examiners, previous hospitalization records must be considered. At least one of the examiners appointed by the court must be a licensed physician. The examiners' reports must include the grounds for the examiners' conclusions.

If the report of the designated examiners is that the patient is not mentally ill to the extent that involuntary treatment is required and reasons have been set forth in the report, the court shall dismiss the petition and the patient must be discharged immediately by the facility unless the designated examiners report that the patient is a chemically dependent person in need of emergency commitment and that procedures have been initiated pursuant to Section 44- 52-50. In which case, emergency commitment procedures must be complied with in accordance with Chapter 52, and the facility shall transfer the patient to an appropriate treatment facility as defined by Section 44-52-10, provided that confirmation has been obtained from the facility that a bed is available; transportation must be provided by the department.

If the report of the designated examiners is that the patient is mentally ill and involuntary treatment is required, the court may order that the person be detained, appoint counsel for the patient if counsel has not been retained, and fix a date for a full hearing to be held pursuant to Section 44-17-570 within fifteen days from the date of admission. The court shall give notice of the hearing pursuant to Section 44-17-420.

> The examiners' report must be available to the person's counsel before the full hearing. The person must be given the opportunity to request an independent designated examiner pursuant to Section 44-17-530.
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> If before the hearing, the designated examiners determine that the patient is no longer mentally ill to the extent that involuntary treatment is required, they shall cause a supplemental report to be submitted to the court. If the court receives a supplemental report at least forty-eight hours before the hearing stating that the patient is no longer mentally ill to the extent involuntary treatment is required, and setting forth the reasons for the examiners' conclusions, the court shall dismiss the petition and the patient must be discharged immediately by the facility.

In your letter you referenced that if consistent with Section 44-17-410, a doctor determines that the patient is mentally ill and in need of hospitalization, the doctor signs a Part II certification of licensed physician and the person is committed. Such form references that the individual be transported to either a named SCDMH psychiatric hospital or a non-SCDMH hospital for involuntary emergency admission. You referenced the situation where at this point, the Department of Mental Health workers attempt to find a placement for the mentally ill person. Unfortunately, sometimes no placement can be found and the person is placed on a waiting list for admission to a DMH facility. In the meantime, the mentally ill person must be held at the hospital while a placement is pending–sometimes for days. In such situation you have questioned who is responsible for maintaining custody and control over the individual and preventing him or her from walking out of the hospital and from harming himself or herself, hospital staff or other patients. You have questioned whether in such situation is law enforcement required to keep officers posted at the hospital or is hospital security responsible. If hospital security is responsible, does it have the authority to physically restrain someone and prevent them from leaving the hospital. You alternatively questioned whether the Department of Mental Health is responsible for providing security and protection for this individual since you state that involuntary commitment begins once the certification is signed.

Additionally, S.C. Code Ann. § 44-17-430 states that

> If a person believed to be mentally ill and because of this condition likely to cause serious harm if not immediately hospitalized cannot be examined by at least one licensed physician pursuant to Section 44-17-410 because the person's whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 44-17-410 shall 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. Upon presentation of an affidavit, the judge of probate for the county in which the individual is present may issue an order requiring a state or local law enforcement officer to take the individual into custody

> for a period not exceeding twenty-four hours. The order expires seventy-two hours after it was issued, and if the person is not taken into custody within those seventy-two hours, the order is no longer valid. During the person's detention the person must be examined by at least one licensed physician as provided for in Section 44-17-410(2). The individual taken into custody has the right to representation by an attorney. If within the twenty-four hours the person in custody is not examined by a licensed physician or, if upon examination the physician does not execute the certification provided for in Section 44-17- 410(2), the proceedings must be terminated and the individual in custody must be released immediately. Otherwise, proceedings must be held pursuant to Section 44-17-410(3).

First it must be stressed the Section 44-17-410 states specifically that "[a] person may be admitted to a public or private hospital, mental health clinic or mental health facility for emergency admission upon..." the certification by a physician that immediate hospitalization is necessary. Therefore, admission at one of these facilities would be permitted following a certification that the individual examined is mentally ill. Hospitalization at a State DMH mental health facility is not the only option. As stated in an opinion dated December 6, 1995, "[t]hus, there is a wide range of choices permitted by the statute as to the particular facility to which an individual may be sent for emergency admissions."

Other relevant provisions to the questions are S.C. Code Ann. § 44-17-450 and 14-17-460 which state:

> The Department of Mental Health, in conjunction with its local mental health centers acting as the preadmission facilities, must develop and maintain a preadmission screening and evaluation process for all psychiatric emergencies at the local community level utilizing available local resources for mentally ill persons. The preadmission screening services must act as the public mental health system's entry point in order (1) to provide to the examining physician information about accessible crisis intervention, evaluation and referral services in the community; (2) to offer to mentally ill persons clinically appropriate alternatives to inpatient care, if any; and when necessary (3) to provide a means for involuntary commitment.
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> Prior to the emergency admission of any person to a psychiatric facility of the Department of Mental Health, the person must be examined by a licensed physician. The physician must inform the mental health center in the county where the person resides or where the examination takes place of the mental and physical treatment needs of the patient. The physician must consult with the center regarding the commitment/admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility.

> The examining physician must complete a statement that he has consulted with the local mental health center prior to the admission of the person to a state psychiatric facility. If the physician does not consult with the center, he must state a clinical reason for his failure to do so. The statement must accompany the physician's certificate and written application for emergency commitment. The department, in its discretion, may refuse to admit a patient to its facility if the physician fails to complete the statement required by this section.

As noted in an opinion of this office dated July 3, 1996,

> Section 44-17-460 sets forth the relationship in the admission process between the examining physician and the local mental health center...Section 44-17-460 requires the examining physician to "consult" with the local Mental Health Center "regarding the commitment/admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility. (emphasis added).

The opinion notes further that

> Consultation, however, is not a veto over a decision which is left to another. Thus, it was stated in Op. Atty. Gen., Dec. 6, 1995 (Informal Opin.) that
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> > [t]he ultimate decision as to this location [of where patient is to be transported] belongs to the certifying physician. Obviously, Section 44-17-460 requires the examining physician to consult with the local mental health center regarding the commitment/admission process and available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility. Moreover, the examining physician must often consider the factors such as the availability of bed space, whether private insurance is available, input from family members, security of a particular facility and the like. However, the final decision ultimately rests with the examining doctor. If the examining physician has consulted with the local mental health facility and such statement of consultation (or the clinical reason for his failure to do so) accompanies the physician's certificate and written application, and the designation of the facility appears on the face of these papers, the law enforcement officer would have no discretion in transporting the individual to such designated facility.
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> The foregoing remains my opinion. Obviously, there must be cooperation between the examining physician and the local Mental Health Center and this Office encourages such cooperation. However, unless and until the civil commitment statutes are amended, I believe statutes require the examining physician to certify the patient's disposition. While the Mental Health Center is required to "consult" with

> the physician and present its views as to alternative treatment, the Center is not authorized to provide a "veto" over the physician's ultimate decision. The whole purpose of the civil commitment process is to hospitalize those who are believed to be mentally ill and likely to cause serious harm to themselves or others.
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> An opinion of this office dated January 17, 1996 noted further that
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> 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.
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> One other provision, S.C. Code Ann. § 44-13-10 should be noted. That provision states that
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> [p]ending his removal to a State mental health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor or manager may fix, but he shall not, except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section. (emphasis added).

Prior opinions of this office have recognized such provision in association with situations where individuals are awaiting being transported to a state mental health facility. See: Ops. Atty. Gen. dated August 10, 2004; March 29, 1995; May 3, 1979.

Several opinions have stressed that part of Section 44-13-10 which indicates that the individual shall not "except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses." Such provision should be read in association with S.C. Code Ann. § 44-23-220 which states that "[n]o person who is mentally ill or mentally retarded shall be confined for safekeeping in any jail." The opinion of this office dated August 10, 2004 recognized that

> ...while we have concluded that "absent extreme emergency", a mentally ill person should not be detained in a jail...(Section 44-13-10)...nevertheless, authorizes the temporary detention of a mentally ill person "pending his removal to a state mental health facility...."

The August 10, 2004 opinion stated that

> [c]onsistent with Section 44-13-10, in cases of "extreme emergency", pending transportation of an individual to a State mental health facility, an individual may be detained in a correctional facility and the facility would be responsible for that individual's safekeeping. However, as further provided by such statute, "[t]he county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual" confined in such circumstances. As to your question regarding whether such action disregards Section 44-23-220, the confining of an individual pursuant to Section 44-13-10 does not disregard Section 43-23-220 but is additional authorization for detaining individuals in cases of "extreme emergency" pending their being transported to a State mental health facility. However, inasmuch as such detention is limited to situations of "extreme emergency" I would assume that such detentions are rare and not routinely done.

The March 29, 1995 opinion recognizing the provisions of Section 44-13-10 which allow the temporary detention of a mentally ill person "[p]ending his removal to a state mental health facility" noted that as to such provision,

> ...this statutory provision, nevertheless, authorizes the temporary detention of a mentally ill person "[p]ending his removal to a state mental health facility..." The Section specifically authorizes detention if the individual's home, a licensed foster home "or any other suitable facility." Certainly this would include a hospital such as Berkeley-Roper or the Berkeley Mental Health Center.

Therefore, consistent with the above, it is not absolutely necessary that an individual certified as mentally ill be committed to a State mental health facility. Other options as expressed above are available to be utilized as necessary due to factors such as a bed shortage at a State mental health facility. As stated, it is the final decision of the examining doctor as to where the individual is placed after consideration of the options available.

The importance of admitting an individual certified as mentally ill to a public or private hospital, mental health clinic or mental health facility pursuant to Section 44-17-410 is stressed by an opinion of this office dated February 9, 2004 which states that

> 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.

S.C. Code Ann. § 44-17-440 provides that

> The 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 the transportation. An officer acting in accordance with this article is immune from civil liability. 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. (emphasis added).

Referencing Section 44-17-440 regarding the three day limit as to admission to a designated mental health facility and the taking of an individual into custody, the question has been asked as to whether the absence of adequate bed space at State mental health facilities allows local hospitals and local law enforcement to disregard these statutory requirements.
The February 9, 2004 opinion stated that

> [t]his office has consistently interpreted Sections 44-17-410 and 44-17-440 as imposing mandatory duties upon law enforcement officers...Therefore, by these statutes, there is a duty of a peace officer to transport emergency patients who are hospitalized under the provisions of Sections 44-17-410 et seq....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.

It should be noted especially that Section 44-17-440 mandates that "[t]he 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." Therefore, it appears that space availability would be a consideration in designating the hospital in the certification.

As to which law enforcement agency would have duties regarding a mental patient, an opinion of this office dated June 21, 1995 recognized that pursuant to Section 44-17-440,

> [t]he certificate required in 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....

The opinion stated that

> [b]y statute, the General Assembly has vested jurisdiction upon any "local law enforcement officer" with respect to the...(transportation of a mental patient)...notwithstanding the limits upon that officer's territorial jurisdiction generally...Prior opinions of this office recognize the mandatory duty of officers with respect to the detention and custody of mental patients where the statutes specifically impose such a duty, notwithstanding the limits of the territorial jurisdiction of the officer generally.

An opinion of this office dated January 17, 1996 stated that

> ...there is a mandatory duty placed upon law enforcement officers to transport mentally ill patients certified for emergency admissions to a hospital or other treatment facility...[T]he police officer must transport a mentally ill patient to a hospital or treatment facility where a certification or court order requiring such is placed in his hands.

In the June 21, 1995 opinion, it was stated that pursuant to Sections 44-17-430 and 44-17-440,

> ...the General Assembly has designated that "a state or local law enforcement officer" is empowered to exercise authority with respect to a mental patient. By statute, the General Assembly has vested jurisdiction upon any "local law enforcement officer" with respect to the referenced situations notwithstanding the limits upon that officer's territorial jurisdiction generally.

Reference was made to an opinion dated March 19, 1981 where it was stated that

> ...it appears that the duty of peace officers extends to the transportation of emergency patients who are hospitalized under the provisions of Section 44-17-410 et seq. even though the patients may be residents of another county.

Reference was also made to an opinion dated March 24, 1976 which stated that the language of the emergency commitment provision implies that an officer who takes a patient into custody pursuant

to a detention order has the duty to maintain that custody until the individual is either committed to the hospital or released.

The opinion of this office dated January 17, 1996 determined that

> ...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, and 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...with "a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others."...Clearly, it is the duty of the officer to carry out the certification as it appears on the face of the document.

An opinion dated June 21, 1995 concluded by noting that while it is well recognized that a law enforcement officer generally possesses no authority beyond his jurisdiction unless such authority is expressly authorized by statute,

> ...it is my advice that where a specific statute expressly authorizes a police officer to act outside his jurisdiction, he may do so. <u>This includes the various commitment statutes</u>...<u>related to the emergency commitment of mental patients, etc.</u>...

An opinion of this office dated October 18, 1995 dealt with the question of whether municipal police officers are included within the term "local law enforcement official" for purposes of Section 44-17-440. Reference was made to a prior opinion of this office dated October 13, 1978 which concluded that municipal police officers would be required to serve and execute orders referenced in Sections 44-17-430 and 44-17-440.

The opinion of this office dated March 19, 1981 referenced the requirement of Section 44-17-440 that "[t]he certificate required by Section 44-17-10(2) shall authorize <u>and require any officer of the peace</u>, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated by said certification...."

As is evident, the various statutes do not clearly designate which law enforcement agency is the responsible agency for transporting and securing an individual certified as mentally ill. Section 44-17-440 simply states that "[t]he certificate required in 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 explained in your letter, if your office issues a detention order then that agency continues to maintain control. Simply stated, any law enforcement agency in whose hands the certificate authorized by Section 44-17-410 is placed would be authorized to transport and provide security services with regard to the individual certified as mentally ill regardless of jurisdictional boundaries.

Another opinion of this office dated May 25, 1990 referenced a prior opinion which dealt with the question of whether a law enforcement officer must stay with an individual taken into custody pursuant to a detention order issued by a probate judge. That opinion stated

> [p]eace officers into whose custody these persons come have a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others. Furthermore, the language in...(present Section 44-17-430)...is clear that such individuals remain in the physical custody of peace officers until some disposition is made.

As to a law enforcement officer's duty in transporting a patient, the opinion of this office dated January 17, 1996 stated that

> [j]ust as in effectuating an arrest, a law enforcement officer is permitted to use such force as is necessary to secure and detain, overcome resistance, prevent escape and protect himself from bodily harm in transporting a dangerous mental patient. The magnitude of such force is left to the sound discretion of the officer. Generally speaking, the law allows the degree of force the ordinary, prudent and intelligent person with the knowledge and in the same situation the officer would use. An officer is not required to determine at his peril the precise amount of force necessary in each instance and may be guided by the reasonable appearances and the nature of the case...Objectively reasonable force is the constitutional standard of conduct by the officer.

The opinion dated October 18, 1995 stated that

> ...officers into whose custody a mentally ill person is taken have a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others. Thus, the officer is authorized to use such force as is reasonably necessary to carry out this duty. This, of course, is a matter within the discretion of the officer so long as the force used is reasonable under the circumstances.

The June 21, 1995 opinion of this office referenced a prior opinion dated March 24, 1976 as concluding that "...the language of the emergency commitment provision implies that an officer who takes a patient into custody pursuant to a "detention order" has the duty to maintain that custody until the individual is either committed to the hospital or released."

S.C. Code Ann. § 44-17-870 provides that

> [i]f a patient involuntarily committed to a facility under the jurisdiction of the State Department of Mental Health is absent without proper authorization, a state or local

> law enforcement officer or employee of the department appointed pursuant to Section 44-17-70, upon the request of the facility superintendent or director or a designee and without the necessity of a warrant or a court order, may take the patient into custody and return the patient to a facility designated by the department.

Additionally, Section 44-17-440 states that "an officer acting in accordance with this article is immune from civil liability." While state law makes an officer immune from civil liability, such does not have the same effect with respect to liability under 42 U.S.C.§ 1983 or federal law generally. However, the January 17, 1996 opinion stated further that

> ...while a police officer is not entitled to immunity in an action brought pursuant to § 1983 under § 44-17-440, there are existing immunities available to the officer under federal law. The United States Supreme Court has held that government officials are shielded from liability for civil damages under § 1983 insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known...Thus, a court will afford a police officer qualified immunity is the officer reasonably believes that he is not violating the clearly established constitutional rights of a mental patient taken into custody and being transported. Moreover, there is other authority which extends absolute immunity from suit to police officers carrying out a court order to take a mental patient into custody and transport that patient to a hospital or mental health facility...In short, where a police officer transporting a dangerous mental patient is sued for violation of the patient's constitutional rights in such transportation, the officer may assert either an absolute or qualified immunity, depending upon the facts of the particular situation.

The December 6, 1995 opinion stated that

> ...just as in effectuating an arrest, a law enforcement officer is permitted to use such force as is necessary to secure and detain, overcome resistance, prevent escape, and protect himself from bodily harm in transporting a patient. The magnitude of such force is left to the sound discretion of the officer...An officer is not required to determine at his peril the precise amount of force necessary in each instance and may be guided by the reasonable appearances and the nature of the case.

The opinion concluded that

> [t]hus, the General Assembly has left to the certifying physician the discretion to determine the particular facility or hospital a suspected mentally ill and dangerous individual is to be sent for emergency commitment. While the certifying physician is required to consult with local mental health officials regarding alternatives for placement and obviously receives considerable input regarding matters such as bed

> space, insurance, etc., the ultimate decision as to the facility where the patient goes remains with the physician who certified the individual pursuant to Section 44-17-410. That physician will make his or her decision based upon an entire range of factors including immediacy, treatment modalities, location, the type of mental illness, etc. Once the particular facility is placed upon the certificate, however, law enforcement must transport the individual to that facility. The officer transporting the individual is authorized to use such force as is reasonable and necessary to insure that the individual is transported to the designated facility without harm to the patient, the officer or the public.

As to your questions regarding who is responsible for maintaining custody and control of an individual at a hospital if the individual is detained at the hospital or does the State Department of Mental Health have a responsibility in such regard, in the opinion of this office, the facility where the patient is held pending any move to a facility of the Department of Mental Health would have that responsibility. According to a memorandum from the State Department of Mental Health regarding emergency services dated June 6, 2002:

> [o]nce a person is examined and certified to be in need of an involuntary emergency admission (Section 44-17-410), in my opinion, the emergency admission papers (application and unexpired certification of licensed physician), provide the hospital with the necessary authority to take reasonable measures to prevent the individual from leaving the hospital. Such authority continues pending either: (a) transportation by law enforcement to a DMH state hospital, or other facility named on the certification (upon confirmation of acceptance by the receiving hospital for immediate admission)...Even if on a waiting list for admission to a DMH state hospital, and/or accepted by a DMH hospital, until the person is physically admitted to a DMH state hospital, the person is not a patient of, nor admitted to, DMH.....

Such conclusion is supported by the recognition that where a facility "...has the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between...(the facility)...and the individual, and the...(facility)...may have a common law duty to warn potential victims of the individual's conduct." Bishop v. S.C. Department of Mental Health, 331 S.C. 79, 82, 502 S.E.2d 78, 87 (1998). See also: Doe v. Marion et al., 361 S.C. 463, 471, 605 S.E.2d 556, 560 (Ct.App. 2006). (emphasis added).

In such situation it would be the responsibility of the hospital security force or local law enforcement with jurisdiction to assist the facility in maintaining control of a patient. While previously referenced Section 44-17-440 requires any state or local law enforcement officer to transport the patient to a hospital, and this office has concluded that the limits of the territorial jurisdiction of those officers is not relevant in such transportation, it appears that upon transportation, the jurisdiction to maintain security would fall to either the hospital security force or the law enforcement agency with the jurisdiction over the facility where the patient is held. As to the amount

of restraint imposed, I am unaware of any statute or court cases relevant which comment on such and as a result, it appears that a decision in such regard would be a matter for conclusion between the medical staff and law enforcement.

The above represents our best efforts to answer your questions based upon current statutory and case law. Obviously, certain situations could be clarified by legislation which would resolve any ambiguities.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General