4959/5656

The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 28, 1995

W. C. Coffey, Jr., Esquire
P. O. Box 1292
Manning, South Carolina 29102

Re: Informal Opinion

Dear Mr. Coffey:

You note that you represent Clarendon Memorial Hospital, a special purpose political subdivision public facility in Manning. You further state that

> [t]he warden of the correctional facility and manager of the prison infirmary has requested that Clarendon Memorial Hospital provide emergency aid and services to inmates requiring tests, procedures and hospitalization. The correctional facility will have an in-house doctor on staff to handle lesser ailments. The medical staff of Clarendon Memorial Hospital has some reservations about serving the prisoners since they would hospitalize them in the facility along with other citizens of the County.
>
> It is our understanding that the prison management company would compensate the hospital for these services. Our concern for the hospital is its liability exposure if it did not agree to treat these patients especially in an emergency. Thus, we would deeply appreciate your opinion as to our hospital's obligation to the correctional facility.

Your question is a novel one in South Carolina and there is no clear answer to it. I have consulted with persons knowledgeable in this area who advise that they do not believe that this is an issue which has ever before arisen.

As a general matter, the following principles are well-recognized:

> [w]hile it has been held that a private hospital owes the public no duty to accept any patient not desired by it, and it is not necessary to assign any reason for its refusal to accept a patient for hospital service, hospitals may be required to accept and render emergency care to all patients who present themselves in need of such care, without consideration of the economic circumstances of such patients, and a patient may not be transferred until all medically indicated emergency care has been completed. (emphasis added).

41 C.J.S., Hospitals, § 20 (c). In specific contexts, courts have reached this general conclusion through a variety of means. I will briefly review these authorities.

The United States Supreme Court has recognized that the primary duty to provide medical care to inmates rests with the governmental entity incarcerating the individual. In City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983) the Court found that such obligation was imposed upon the City of Revere, Massachusetts. There, the Court noted, however, that a governmental entity has wide discretion in carrying out its duty of providing medical care to inmates:

> If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay. There are, however, other means by which the entity could meet its obligation. Many hospitals are subject to federal or state laws that require them to provide care to indigents. Hospitals receiving federal grant money from the Hill-Burton Act, for example, must supply a reasonable amount of free care to indigents. See 42 U.S.C. § 291 c(e) [42 U.S.C.S. § 291 c(e). In the Commonwealth of Massachusetts now, any hospital with an emergency facility must provide emergency services regardless of the patient's ability to pay .... Refusal to provide treatment would subject the hospital to malpractice liability .... The governmental entity may also be able to satisfy its duty by operating its own

> hospital, or possibly, by imposing on the willingness of hospitals and physicians to treat the sick regardless of the individual patient's ability to pay.
>
> In short, the injured detainee's constitutional right is to receive the needed medical treatment; how the city of Revere obtains such treatment is not a federal constitutional question. (emphasis added)

463 U.S. at 245. Clearly, while the Court recognized that Revere was ultimately responsible for providing inmates with medical care, the Court also strongly suggested that a hospital had a duty to provide emergency services, when requested.

In Williams v. Hospital Authority of Hall County, 119 Ga.App. 626, 168 S.E.2d 336 (1969), a public hospital refused to admit and treat the plaintiff, who was in a state of traumatic injury, for a broken arm. The lower court dismissed the complaint and plaintiff appealed. The Georgia appellate court reversed, stating as follows:

> [t]he defendant hospital contends that it has the absolute right to refuse to give emergency treatment to any person. No hospital public or private, is under a common-law duty to accept everyone who applies to admission; nor is there a duty to maintain an emergency ward. However, this is not the same as the duty owed by a public hospital supported by public tax funds which does maintain emergency facilities for the benefit of the general public. The maintenance of such emergency facilities by a public hospital to render first aid to injured persons has become a well-established adjunct to the main business of a hospital. Treatment is performed by the hospital staff and the patient is billed by the hospital rather than a physician. To say that a public institution which has assumed this duty and held itself out as giving such aid can arbitrarily refuse to give emergency treatment to a member of the public ... is repugnant to our entire system of government.

168 S.E.2d at 337. (emphasis added).

Furthermore, in Saint Barnabas Medical Center v. County of Essex, 111 N.J. 67, 543 A.2d 34 (1988), a hospital provided treatment to a prisoner. Corrections officers brought the prisoner to Saint Barnabas Hospital for treatment of burns even though the

County had an existing contractual arrangement with another hospital for the treatment of its prisoners. The Hospital treated the inmate completely, even beyond service of the inmate's sentence which ended during his stay in the Hospital. The Court held that the County was only obligated to pay the Hospital for that portion of the prisoner's bill which the county explicitly had promised to pay.

The Court recognized that the County possessed a constitutional obligation to provide adequate medical care to its prisoners. "[H]aving determined that Williams could not receive adequate care in the jail's own facilities, county corrections officials had a duty to obtain proper treatment elsewhere", the Court observed. 543 A.2d at 38.

Next, the Court held that St. Barnabas Hospital was bound by New Jersey law to "accept and treat" the prisoner. Reasoned the Court,

> [p]ursuant to rule-making authority granted by the Legislature ... the Department of Health has promulgated regulations requiring all hospitals, as a condition of licensure, to treat indigent patients needing care. Moreover, the Administrative Code mandates that "all hospitals shall provide accident and emergency services and shall accept, when medically indicated, patients seeking such services without regard to their ability to pay." .... Indeed, in legislation enacted subsequent to the events at issue in this case, the Legislature has prescribed, inter alia that "access to quality health care shall not be denied to residents of the State because of inability to pay for the care ...." (emphasis added).

543 A.2d at 38. Even though the Court concluded that the Hospital was required to treat the prisoner under State law, there was no corresponding duty on the part of the county to reimburse the Hospital in full. Absent a specific contract or implied-in-fact contract, the County was not bound to pay. Nevertheless, the Court found a quasi-contract or contract implied-at-law based upon the doctrine of unjust enrichment, at least for that portion of the inmate's bill where treatment had been rendered during service of the inmate's sentence. For our purposes, however, the important point is that St. Barnabas recognized the Hospital's duty to accept emergency patients without regard to their ability to pay.

In Hill v. Ohio County, 468 S.W.2d 306 (Ky. 1971), a county hospital refused to admit a woman who was about to have a baby. There were four doctors authorized to practice at the hospital and one was on call that evening. The doctor advised the nurse

that he did not handle "walk-in OB's". Hospital rules provided a patient could not be admitted without an order from a doctor and no doctor authorized the woman's admission. Thus, she was denied entry into the hospital.

Subsequently, the woman died for want of medical treatment. Her estate sued and the Court upheld the lower court's granting of summary judgment on behalf of the defendant hospital. The Court stated:

> [i]n the instant case, the decedent was not admitted to the hospital nor was the element of critical emergency apparent. The hospital nurse acted in accordance with valid rules for admission to the facility. The uncontradicted facts demonstrate that no breach of duty by the hospital occurred. The nurse could not force the private physicians to accept decedent as patient. The nurse did all she could do for the decedent on the occasion in question. Therefore, the hospital and the nurse were entitled to dismissal as a matter of law.

468 S.W.2d at 309. The key factor here was thus the absence of an emergency. See also, Thompson v. Sun City Comm. Hosp. Inc., 141 Ariz. 597, 688 P.2d 605, 610 (1984) [public policy requires acceptance and rendering of emergency care by hospitals to all who present themselves in need of such care]; Wilmington Genl. Hosp. v. Manlove, 54 Del. 15, 174 A.2d 135 (1961) [private hospital maintaining emergency ward must render service to patient in unmistakable emergency].

South Carolina statutes appear to be in accord. S.C. Code Ann. § 44-7-260 (E) provides in pertinent part as follows:

> [n]o person, regardless of his ability to pay or county of residence, may be denied emergency care if a member of the admitting hospital's medical staff or, in the case of a transfer, a member of the accepting hospital's medical staff determines that a person is in need of emergency care.

In addition to any action taken by DHEC, with respect to the hospital's license, violation of the provision can result in a civil penalty. Consistent with this statute, Section 44-6-150(C) (Medically Indigent Assistance Program) provides:

> (C) In administering the Medically Indigent Assistance Program, the department shall determine:

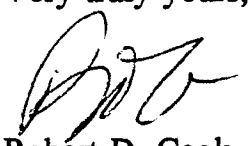
> (1) the method of administration including the specific procedures and materials to be used statewide in determining eligibility for the program;
>
> > (a) In a nonemergency, the patient shall submit the necessary documentation to the patient's county of residence or its designee to determine eligibility before admission to the hospital,
> >
> > (b) In an emergency, the hospital shall admit the patient pursuant to Section 44-7-260. If a hospital holds the patient financially responsible for all or a portion of the inpatient hospital bill, and if the hospital determines that the patient could be eligible for the program, it shall forward the necessary documentation along with the patient's bill and other supporting information to the patient's county of residence or its designee for processing. A county may request that all hospital bills incurred by its residents sponsored by the program be submitted to the county or its designee for review. (emphasis added).

Based upon the foregoing, it would appear that, pursuant to statute, as well as public policy, a hospital, particularly a public hospital, would have a duty to provide emergency care, if such is determined to be necessary, to anyone regardless of ability to pay or residence. Presumably, such duty would as well be owing to an inmate or prisoner. Of course, this general rule presumes that an individual has actually sought such admission or assistance. No case or statute of which I am aware addresses the issue of whether a hospital must contract with a governmental entity to provide future services where an actual applicant for such services has not presented himself or herself to the hospital. As noted above, this is not a situation which has apparently ever arisen. I could only guess that this would be a matter of contract. Based upon my research however, it would appear that a hospital would be obligated to provide emergency assistance, if deemed necessary, to anyone who actually seeks such service, regardless of their ability to pay.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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