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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 3, 1996

Ms. Patricia A. Cohrac, ARM
Director Safety and Security/Risk Management
Anderson Area Medical Center
800 North Fant Street
Anderson, South Carolina 29621

Re: Informal Opinion

Dear Ms. Cohrac:

You state that "[o]ne of the processes a multi-disciplinary team from Anderson Area Medical Center has been evaluating is the process for involuntary admission of a patient to a mental health facility." Noting that your facility "does not accept involuntary admission of mentally ill patients", you state your dilemma as follows:

> [a]s required by law for admission to a state mental health facility, a non-physician professional from the Department of Mental Health is contacted to screen and offer treatment options to the patient and the attending physician. If, in the opinion of the State Mental Health professional, the patient either does not need treatment or, as is more often the case, the Mental Health professional feels the patient can be effectively treated on an outpatient basis, then inpatient admission to a state facility appears to be denied. In some instances, the patient's attending physician may disagree with the Mental Health professional's opinion. Since many of these patients are self-pay or are homeless, the physician is unable to place the patient in a private hospital which accepts involuntary admission but requires private insurance. The patient's physician may, under these circumstances, contact the

admitting physician at the local Mental Health inpatient facility. If the admitting physician at that facility is unwilling or unable to accommodate the patient and the patient refuses voluntary admission to our mental health inpatient program, we have no option but to release the patient when the patient is medically stable.

Our team is at a loss as to what can or should be done when there is a discrepancy between what the State Mental Health professional feels is best for the patient and what the patient's attending physician feels is best for the patient.

We are concerned first for the welfare of the patient or the community to which the patient is returning. We are also concerned about the legal liability of the patient's physician and the medical center if the patient harms himself or others. Let me hasten to add this situation does not occur frequently, however, it causes the physician and the medical center staff involved grave concern when it does occur.

LAW/ANALYSIS

I believe it to be helpful first to briefly review South Carolina's civil commitment statutes.

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 and 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 a 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 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 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 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 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, and 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 sets forth the relationship in the admission process between the examining physician and the local mental health center. That Section provides as follows:

> [p]rior 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 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.

The primary guide in interpreting a statute is to determine the intent of the legislature. Adams v. Clarendon Co. Sch. Dist., 270 S.C. 266, 241 S.E.2d 897 (1978). When the terms of a statute are clear and unambiguous, such terms must be applied according to their literal meaning. Anders v. S.C. Parole and Community Corr. Bd., 279 S.C. 206, 305 S.E.2d 229 (1983). The statute must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Moreover, the statute must be construed in light of the particular circumstance which it sought to remedy. Judson Mills v. S.C. Unemployment Comp. Comm., 204 S.C. 37, 28 S.E.2d 535 (1944).

The United States Supreme Court has repeatedly recognized the important interests of the state in the involuntary commitment of a person who is mentally ill and dangerous to himself or others. As the Court stated in Addington v. Texas, 441 U.S. 418, 426, 99 S.Ct. 1804, 60 L.Ed.2d 323, 331 (1979).

> [t]he State has a legitimate interest under its paren patriae powers in providing care to its citizens who are unable because of emotional disorders to care for themselves; the state also has authority under its police power to protect the

> community from the dangerous tendencies of some who are mentally ill.

This Office has also repeatedly recognized that the duties contained in Section 44-17-410 et seq. are mandatory and must be followed. See e.g., Op. Atty. Gen. March 19, 1981; Op. Atty. Gen., Jan. 17, 1996 (Informal Opinion); Op. Atty. Gen., Dec. 6, 1995 (Informal Opinion).

Section 44-17-460 requires the examining physician to "consult" with the local Mental Health Center "regarding the commitment/admissions process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility." It is well-recognized that one "consults" if he provides information or instruction. Cochran v. Ernest and Young, 758 F.Supp. 1548, 1558 (E.D. Mich. S.D. 1991). To "consult" simply means to seek opinion or advice of another, to take counsel, to deliberate together and to confer. Garman v. Metropolitan Life Ins. Co., 175 F.2d 24, 27, 28 (3d Cir. 1949). As our Supreme Court recognized in Dunbar v. Fant, 170 S.C. 414, 424, 170 S.E. 460 (1933) a "consultation" is "the deliberation of two or more persons on some matter; a council or conference to consider a special case."

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

> [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.

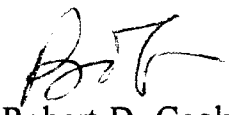
The foregoing remains my opinion. Obviously, there must be cooperation between the examining physician and the local Mental Health Center and this Office encourages such cooperation. However, unless and until the civil commitment statutes are amended, I believe statutes require the examining physician 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. As you recognize, the courts have, on occasion, imposed liability for the conduct of a dangerous mentally ill person in certain instances.

One other option is available, You may wish to bring this problem, if it persists, to the attention of the local Probate Judge and see if an amenable solution can be found.

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

RDC/ph