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February 27, 1989

The Honorable Patrick B. Harris  
Member, House of Representatives  
213 Blatt Building  
Columbia, South Carolina 29211

Dear Representative Harris:

You have inquired as to the powers of the probate court to hold an individual in contempt of court for failure to adhere to an order for outpatient treatment. In particular, you are concerned about probate courts holding alcohol and drug abuse patients in contempt for failure to obey court orders for treatment. It would appear that a probate court would have several remedies in this instance, including a citation for contempt of court; as will be explained more fully, a contempt of court citation should be undertaken extremely cautiously, however.

Failure to adhere to an outpatient treatment program by an individual involuntarily committed to an alcohol or drug treatment program but who is subsequently released to undergo outpatient treatment is covered by Section 44-52-160 of the Code of Laws of South Carolina (1988 Cum. Supp.), which provides the following:

If a person who was involuntarily committed violates the conditions of his release including a failure to adhere to an outpatient treatment program as ordered by the court, the court may, upon a written affidavit of the head of the treatment facility or the director of a treatment program under whose supervision the person was released, and upon notice to the person and his counsel, order a supplemental hearing and further order inpatient treatment. The probate court issuing the order shall maintain jurisdiction over the person for the purpose of supplemental proceedings.

If a person who violates the conditions of his release is in such a condition that he poses a substantial risk of physical harm to himself or others, the court may, upon a written affidavit of the head of the treatment facility or the director of a treatment program under whose supervision the person was released, order the patient to be returned to the treatment facility from which he was released pending the conduct of a supplemental hearing which must be held within seventy-two hours from the time of admission to the facility.

Any person with respect to whom further involuntary inpatient treatment is ordered as a result of the supplemental hearing, may be recommitted for a period of treatment not to exceed sixty days.

As noted, this statute provides several alternatives to enforce compliance with court-ordered outpatient treatment.

While not specified by statute, a citation for contempt of court (or criminal contempt) is also a possible remedy. If there had been any doubt that probate courts had inherent contempt powers, that doubt was removed by Ex Parte: Stone v. Reddix-Smalls, 295 S.C. 514, 369 S.E.2d 840 (1988). To preserve the court's authority and to punish one for the disobedience of a court order, criminal contempt sanctions may be imposed. 17 Am. Jur.2d Contempt §4. To establish the basis for imposition of sanctions, it must be shown that a court order existed and that the order was wilfully disobeyed. Moseley v. Mosier, 279 S.C. 348, 306 S.E.2d 624 (1983).

The issue of wilful disobedience must clearly be established. In Moseley, supra, the court stated that the record must "clearly and specifically reflect the contemptuous conduct." Id., 279 S.C. at 351. Wilful disobedience connotes knowing, deliberate, intentional, or purposeful disregard of the court order. See 45 Words and Phrases, "Willful; Willfully." In those instances in which a potential contemnor has been found to have an alcohol or drug problem, it is possible that such wilful or intentional disobedience may be difficult to establish; capacity to understand the court order may well be an issue. If the probate court is satisfied that disregard of its order was indeed wilful or intentional, then perhaps imposition of criminal sanctions for contempt would be appropriate. In such a case, the record should clearly and specifically reflect the basis upon which the determination was made.

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In addition to the potential difficulty in establishing the wilful or intentional disobedience of a court order in some patients, another area of concern is presented by Sections 44-23-220 and 44-13-10 of the Code, which basically prohibit the detention of mentally ill patients in jails for safekeeping prior to their transportation to a mental health facility.<sup>1/</sup> While these statutes are not directly responsive to the issue you have raised, it must nevertheless be noted that obtaining treatment is the primary objective once an individual has been determined to have an alcohol or drug problem. Detention or incarceration is punitive in nature, and while such upholds the dignity and authority of and respect for the probate court, the treatment of the individual is not enhanced thereby, particularly if wilful disobedience to the court order is not present. It would appear that detention or incarceration would thus be imposed indirectly rather than directly, a result to be avoided if possible. In such cases, supplemental proceedings would be preferable.

In conclusion, the probate court has several alternatives to utilize when an individual deemed to have an alcohol or drug problem fails to comply with an order for outpatient treatment, among them the power to impose criminal sanctions for contempt of the court order. To impose those sanctions, it would be necessary to establish clearly and specifically a wilful, knowing, intentional disobedience to the court order. Detention or incarceration in a jail or correctional facility should be undertaken cautiously, as noted above.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

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<sup>1/</sup> This is not to say that mental illness is the same as chemical dependency. Contrast Section 44-52-10(1) with Section 44-23-10(1). In either case, however, treatment of the individual is the primary goal, rather than punishment. Op. Atty. Gen. No. 77-375.