

1981 S.C. Op. Atty. Gen. 32 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-15, 1981 WL 96542

Office of the Attorney General

State of South Carolina

Opinion No. 81-15

February 23, 1981

***1 SUBJECT: Mental Health, Emergency, Examinations, Medical Examiners, Hospitals, Physicians and Surgeons, Petitions, Statutory Construction**

The certifying physician and the petitioner for the emergency admission of a person to a hospital, a State hospital, a mental health clinic or a State mental health facility can be the same individual.

To: Larry W. Propes, Esquire
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South Carolina Department of Mental Health

QUESTION:

Is it permissible for the certifying physician and the petitioner for the emergency admission of a person pursuant to [Section 44-17-410, Code of Laws of South Carolina \(1976\)](#), as amended, to be the same individual?

STATUTES AND CASES:

[Section 44-17-410, Code of Laws of South Carolina \(1976\)](#), as amended; [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E. 395, 44 C.J.S. [Insane Persons](#) § 67(d) p. 165 n. 75.10 (supp.); 87 [Harv. L. Rev.](#) 1265 (1974); [Mental Disability Law Reporter](#), Vol. 4, No. 2, March-April 1980, p. 96; [American Bar Foundation, The Mentally Disabled and the Law](#) 49 (rev. ed. S. Brakel and R. Rock 1971); 41 [Am. Jur.](#) 2d [Incompetent Persons](#) § 10.

DISCUSSION:

[Section 44-17-410, Code of Laws of South Carolina \(1976\)](#), as amended, states in part:

'Any person may be admitted to a hospital, a state hospital, a mental health clinic or a state mental health facility approved by the Department of Mental Health for emergency admission upon:

(1) Written application under oath by any person stating:

(2) A certification in triplicate by at least one licensed physician stating that he has examined the person and is of the opinion that he is mentally ill and because of his condition is likely to cause harm to himself through neglect, inability to care for himself, personal injury or otherwise or to others if not immediately hospitalized. The certification shall contain the grounds for the opinion.'

The aim of emergency detention is to protect the individual from serious harm or to prevent him from inflicting immediate injury on others and to confine him until a more permanent disposition of his case can be made. [87 Harv. L. Rev. 1265 \(1974\)](#). Eighteen jurisdictions in the United States permit 'any person' to sign applications for the hospitalization of an alleged mentally ill person. In the remaining states, the right to file an application is limited to one or more of the following groups: spouses, relatives, friends, guardians, public officials, physicians and superintendents of the hospital. [American Bar Foundation, The Mentally Disabled and the Law](#) 49 (rev. ed. S. Brakel and R. Rock 1971).

Under some statutes a duly qualified physician may make the request for confinement and care of a mental patient. 44 C.J.S. [Insane Persons](#) § 67(d), p. 165, n. 75.10, (supp.) Recently a District of Columbia Court of Appeals ruled¹ that it would be improper for a physician-member of the Commission on Mental Health, that determines whether hospitalization is required, to act as the person who initiates the commitment application. This was limited to a situation in which the physician who participated in the commission proceeding would not be a 'family physician' or one in a 'voluntary physician-patient relationship'. Also, the District of Columbia Code specifically states that commission members 'may not participate in the disposition of the case of a person in which they have rendered professional service or advice'. [Mental Disability Law Reporter](#), Vol. 4, No. 2, March-April 1980, p. 96. Thus, the statutory provision is readily distinguishable from the South Carolina statutes.

*2 The general authority on this point is stated in 41 Am. Jur. 2d [Incompetent Persons](#) § 10 as follows: 'Although it has been held that lunacy proceedings cannot be initiated on the application of a mere stranger, under the statutes of some states, any person, even a stranger, may petition for a commission to inquire as to the sanity of any person within the jurisdiction of the court. The opinion has been expressed that it is not material who institutes the proceeding, so long as it is for the best interests of the individual and those among whom he lives. In any case, it is not essential that a complaint charging one with lunacy be made by a physician or other specially qualified person; it may be made by a layman.'

There is no prohibition against the petitioner, 'any person', being the certifying physician in § 44-17-410, [Code of Laws of South Carolina \(1976\)](#), as amended, or any other statutory provision. The basic criteria for § 44-17-410 is that the individual who is to be committed on an emergency basis is 'likely to cause serious harm to himself or others if not immediately hospitalized'. Procedural safeguards are activated once the individual is hospitalized. Counsel is appointed for him if he has not retained counsel, the individual is later examined by two designated examiners pursuant to § 44-17-410(3), a due process hearing is held within twenty (20) days of admission pursuant to § 44-17-570, and notice of the hearing is required by § 44-17-420. Additionally, the proposed patient has the right to request an independent examiner under § 44-17-530. Legislative intent determines the interpretation of the statutes. In ascertaining this intent, the Court is not governed by apparent meaning of words in one clause, sentence, or part of a statute, but by consideration of the whole Act, read in light of conditions and circumstances as they appear to the Legislature and the purpose sought to be accomplished. [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E. 395.

No initial prejudice is caused the person committed if the petitioner is also the certifying physician.² South Carolina does not have a committee such as that in the above-cited D. C. Court of Appeals situation. The certifying physician in South Carolina is not one selected to serve on a panel to recommend hospitalization.

CONCLUSION:

In the opinion of this office, the certifying physician in an emergency admission as described in § 44-17-410, [Code of Laws of South Carolina \(1976\)](#), as amended, may also be the petitioner.

Raymond G. Halford
Deputy Attorney General

Footnotes

1 [Williams v. Meredith](#), 407 A.2d 569 (D.C. Ct. App. 1979).

2 Section 44-23-240 provides penal sanctions for wilfully causing or conspiring or assisting in the unwarranted confinement of any individual.

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