

1982 WL 189192 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 1982

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Dear Mr. Rawl:

You have inquired of this Office as to the responsibilities and liabilities of hospital personnel arising from the search for or discovery of contraband drugs and unauthorized medication found in the possession of patients in the Lexington County Hospital.

As you relate in the attachment to your letter, hospital personnel in the course of treating patients occasionally find them in possession of contraband or unauthorized drugs, such as marijuana, LSD, Quaalude, alcohol and other such substances, or discover evidence of their use. In certain instances the effect of patient use of alcohol and unauthorized drugs and their uncontrolled interaction with legitimately prescribed and administered drugs could be detrimental or even fatal to the patient as well as other persons in the hospital. Accordingly, you ask (1) under what circumstances hospital personnel may search a patient's room for such substances, (2) what the legal responsibility of the hospital is to notify law enforcement officials upon discovery, and (3) what the hospital's civil liability to the patient is, if any, for reporting such instances.

The Fourth Amendment prohibits unreasonable searches of, among other things, persons and their effects. Where a search of a person and his or her effects is conducted without a warrant, the determination of whether the search is unreasonable, and therefore forbidden, 'requires a balancing of 'the public interest against the Fourth Amendment interest of the individual.' [Chenkin v. Bellevue Hospital Center, New York City Health and Hospitals Corp.](#), 479 F. Supp. 207, 213 (S.D.N.Y. 1979); accord, [Bell v. Wolfish](#), 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed. 2d 447 (1979); [State v. Foster](#), 269 S.C. 373, 237 S.E. 2d 589, 592 (1977). Factors that are crucial to this balancing analysis include the strength of the public necessity for the search, the efficacy of the search, and the degree and nature of the intrusion upon the person. [Chenkin](#), *supra*.

(1) First, please be advised that our research has disclosed no case directly on point. However, in similar situations, such as public school cases, the courts have generally held that searches for drugs and alcohol do not violate the Fourth Amendment protection against unreasonable searches and seizures due to the countervailing interests of the school personnel in providing an atmosphere conducive to learning. [Dixon v. Alabama State Board of Education](#), 297 F. 2d 150 (5th Cir. 1961), [Moore v. Student Affairs Committee of Troy University](#), 284 F. Supp. 725 (M.D. Ala. 1968). See also [U.S. v. Fox](#), 407 F. Supp. 857 (W.D. Okla. 1975) in which a search and seizure on a military base was held to be reasonable as being in the interest of military security. It should be noted that in those cases there was a regulation or other notice to the public that such searches may be conducted. Although the answer to your specific question can only be determined by a court on a case-by-case basis, it would appear that the searches such as you contemplate further a legitimate public interest in controlling the problem and, therefore, would not violate the Fourth Amendment. And see [Davis v. Reynolds](#), 319 F. Supp. 20 (N.D. Fla. 1970) and [U.S. v. Kroll](#), 351 F. Supp. 148 (W.D. Mo. 1972).

*2 Similarly, once aware that a patient is in possession of or using such unauthorized substances, it appears that there arises a duty on the part of the hospital to use reasonable care in protecting the patient from self-inflicted injuries. 9 AM. JUR. POF 2d, [Hospitals & Asylums](#) § 1, p. 229. Failure to do so would expose the hospital to liability for such self-inflicted injury upon

the theory that the hospital either did not train its personnel properly, failed to supervise them properly, failed to exercise care in the selection and assignment of employees, or permitted dangerous conditions to exist. *Id.* Since the amount of care owed by the hospital depends upon the particular circumstances of each case, the hospital is required to provide such reasonable care for the safety of its patients as their known mental and physical condition requires. *Id.*, pp. 229-230. See [Stuppy v. U.S.](#), 560 F.2d 373 (8th Cir. 1977) in which a hospital was held not liable for damages since it had properly discharged its duties.

(2) Second, as to the legal responsibility of hospital personnel to notify law enforcement officials upon discovery, please be advised that South Carolina recognizes the common law crime of misprision of a felony, which is defined as 'a criminal neglect either to prevent a felony from being committed or to bring the offender to justice after its commission, but without such previous concert with, or subsequent assistance of, him as will make the concealer an accessory before or after the fact.' [State v. Carson](#), 274 S.C. 316, 262 S.E. 2d 918, 920 (1980). Under state law, the possession of controlled substances is a felony under certain circumstances such as the identity of the drug itself, the amount in possession, and any prior convictions, § 66-53-370 of the 1976 CODE, as amended. Under federal law, the unlawful possession of controlled substances is a felony under all circumstances. 21 U.S.C. 801, *et seq.* In any event, there would be a general duty on hospital personnel to notify law enforcement officials of such criminal conduct, particularly when a failure to do so would present the clear possibility of resulting injury or death to the patient or others in the hospital.

(3) Finally, as to possible liability for reporting such matters to law enforcement officials, we are unaware of any right of a patient in a public hospital which would require hospital personnel to remain silent with knowledge that a crime is being committed which could endanger the health and safety of the patient and others in the hospital. Therefore, it appears that no civil liability would arise from the notification of appropriate law enforcement officials in such cases.

I trust the preceding discussion adequately answers your questions, however, if any further explanation or assistance is required, please do not hesitate to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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