

1981 S.C. Op. Atty. Gen. 66 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-43, 1981 WL 96569

Office of the Attorney General

State of South Carolina

Opinion No. 81-43

May 1, 1981

*1 Honorable Joyce C. Hearn
Member
House of Representatives
1316 Berkeley Road
Columbia, South Carolina 29205

Dear Joyce:

Thank you for your letter of April 22 concerning access to patient records at the State Hospital.

You asked 'whether a sister agency could look at patient records when the best interest of the patients were involved.'

The records are protected from disclosure and made confidential by the provisions of [Section 44-23-1090 of the Code](#) of Laws. Exceptions exist in identified circumstances. The nearest to which might be pertinent to your question is Subsection (4), which provides that:

'Disclosure is necessary in cooperation with State and Federal agencies, or subdivisions thereof, in furthering the welfare of the patient or his family; —.'

When directed toward the welfare of an individual patient, disclosure would be warranted under this section. On the other hand, where there is a general effort to obtain patient records with a general claim of benefit to patients as a class, I do not believe that disclosure would be warranted. The determination must be made initially by the Department of Mental Health as to whether the patient's welfare, or that of his family, would be furthered by disclosure; this is subject, of course, to review in an appropriate procedure before a court. There are penalties for disclosure, in addition to possible deprivation of federal funds if wrongful disclosure is made. This probably has an influence on the hesitancy of mental health personnel to disclose records. For this reason, I am sure that there is a constant surveillance of the privacy of the records to make certain that wrongful disclosure is not made. I believe, myself, that the chief problem to be encountered will be the authority of the Legislative Audit Council to undertake this type of investigation because of its lack of authority and, of course, this can only be remedied by statutory change.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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