

1977 WL 37445 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 13, 1977

*1 Representative John M. Rucker
1219 Boyce Street
Newberry, South Carolina 29108

Dear Mr. Rucker:

I have received and I am enclosing the Department of Health, Education and Welfare's opinion concerning your question on the confidentiality of patient records at the Newberry County Commission on Alcohol and Drug Abuse.

You will note that the opinion states that the regulations prohibit a director from disclosing to the county sheriff the presence or absence, patient status of, or other information relating to the individual unless an authorizing court order is issued in accordance with §§ 2.64 and 2.65 of the regulations. Unfortunately that is where the discussion ends. Nothing is said about the situation where the sheriff already knows that the individual sought is a patient of one of these centers. In order to fully understand their position, telephone contact was made and I was informed that it was HEW's interpretation that the regulations prohibited the release of any information concerning patient status even if the patient has impliedly consented to the release by giving out the center name as his or her place of residence. I was further informed, however, that the regulations do not prohibit a sheriff from serving the arrest warrant if he knows that the person is a patient at the center.

With reference to the second hypothetical which you raised about the missing person investigation, it is HEW's position that the information can be released if the sheriff has an authorizing court order or the patient consents. The letter seems to say that both are required but HEW has told me that only one of the requirements need be met. Mr. Lanman of HEW also informed me that if the director knows for a fact that the individual sought is not and has never been a patient, then he may disclose that information. Obviously this seems to effectively thwart the purpose of the regulations for the only time a director is required to be noncommittal is in the situation where the person sought has been or is a patient and there is no court order or patient consent.

When I asked Mr. Lanman if the various directors of the centers throughout the nation were aware of these interpretations, he informed me that the question has never arisen before. So in order to be completely in accord with Federal law, I have asked for another opinion to get in writing the opinions expressed over the phone by Mr. Lanman.

I trust this information will be of assistance to you and I will forward the next opinion to you when I receive it.

Sincerely yours,

Richard D. Bybee
Staff Attorney

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