

1975 WL 29638 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 31, 1975

***1 Re: Disclosure of Confidential Patient Information to Volunteers**

Edward C. Faria, FAAMA
Administrator
Columbia Area Mental Health Center
1618 Sunset Drive
Columbia, South Carolina 29203

Dear Mr. Faria:

I am writing in response to your inquiry presented by letter of March 14, 1975. In this letter you questioned whether volunteers helping at the Community Mental Health Centers, should have access to the records, certificates, applications, and reports of the patients and past patients.

The prohibition against the disclosure of records of this type is found at Section 32-1022, SOUTH CAROLINA CODE OF LAWS, 1962, as amended. This statute generally prohibits disclosure of records and other information identifying a patient, past patient, or trainee as a patient in a mental health facility. The statute mandates that such records be kept confidential. Section 32-1022 is a remedial piece of legislation in that it attempts to remedy a gap in the common law by providing for the protection of the rights and privacy of a certain group of individuals—the patients. There is also a criminal provision within Section 32-1022, but this opinion does not attempt to construe that provision of the act. Remedial legislation should be construed in the light most favorable to the protected individuals. 82 CJS Statutes Section 388. Where the intent of the legislature is to protect the rights of individuals, the legislation should be construed broadly to protect these rights. Sherbert v. Verner, 240 S.C. 286, 291; 125 S.E. 2d 737 (1962). The general prohibition against disclosure of confidential information found in paragraph one of Section 32-1022 should be broadly construed and doubts should be resolved in favor of the patient's confidentiality, the right intended to be protected.

There are six(6) specified categories of exceptions to the general prohibition of Section 32-1022. Any of these exceptions should be strictly construed:

‘Exceptions in a statute as a general rule, should be strictly, but reasonably construed, in conformity with the purpose and meaning of the statute.’ 82 CJS Statutes Section 382.

All doubts, involving a general provision and an exception, should be resolved in favor of the general provision rather than the exception. Therefore to analyze a fact situation in regard to the remedial aspect of this statute all questions and doubts should be resolved in favor of maintaining the patient's right to confidentiality of this information as opposed to permitting disclosure of said information pursuant to a stated exception.

There is no specific exception which mentions the actual disclosure of confidential information to volunteers within Section 32-1022; just as there is no specific exception which generally allows disclosure to all employees of the Department of Mental Health. In this regard disclosure under Section 32-1022 to volunteers assisting at mental health centers is prohibited unless the specific nature of the individual volunteer's work brings the same within the narrow scope of one of the statutory exceptions to the general prohibition. Section 32-1022(2) states:

***2** ‘Disclosure may be necessary to carry out any of the provisions of this chapter.’

This exception appears to be the only section that could possibly permit volunteers to assist in the processing of administrative records within the Mental Health Centers.

In accord with the prior mentioned rules of construction, this exception must be strictly construed with the key word in such construction being necessary. One must question the necessity of disclosure of specific confidential records to volunteers to accomplish a particular duty and resolve also that the duty is needed to carry out some provision of the chapter of laws dealing with mental health.

In summary, it is the opinion of this office that volunteers are prohibited from access to the certain confidential records mentioned in Section 32-1022 unless the activity in which the volunteers are participating falls within the scope of one of the specific exceptions to the general prohibition of disclosure. The exceptions should be narrowly and strictly construed and all doubts should be resolved in favor of confidentiality and the patient's rights thereto. The question of disclosure to volunteers must be decided on a case by case basis, and therefore it cannot be said that a volunteer is prohibited or permitted to receive confidential information solely because of his or her status as a volunteer. If it becomes necessary to disclose certain confidential information, the disclosure of said information must be necessary to carry out a certain provision within the chapter of laws on mental health. When confidential information is disclosed, only such limited information as is absolutely necessary should be disclosed and not the patient's record in total. If disclosure of certain confidential information to an individual volunteer is warranted, then in order to help insure that the patient's or past patient's right of confidentiality and privacy is insured in accord with the manifest intent of Section 32-1022, SOUTH CAROLINA CODE OF LAWS, 1962, as amended, the volunteer should, before any disclosure of said information, become familiar with the provisions of Section 32-1022 and the substantial criminal penalties therein.

Very truly yours,

Edwin E. Evans
Staff Attorney

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