

1975 WL 28871 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1975

***1 Re: Patient Rights within Alcohol & Drug Addiction Center**

Dr. Thomas G. Faison
Deputy Commissioner
Division of Alcohol & Drug Addiction Services
S. C. Department of Mental Health
7901 Farrow Road
Columbia, South Carolina 29203

Dear Dr. Faison:

Mr. Bill Creech spoke with me recently and presented certain questions as to the Alcohol and Drug Addiction Center and the rights of patients therein. Specifically, Mr. Creech expressed concern over the application of Sections 32-994 through 32-1000.1, SOUTH CAROLINA CODE, 1962, as last amended by Act No. 1158 of 1974.

In a strictly technical sense, the rights and privileges provided to 'patients' in the above-cited sections do not apply to patients admitted to the Alcohol and Drug Addiction Center under Act No. 1230 of 1968. Patients whose rights are affected by Sections 32-994 through 32-1000.1 are patients as defined in Section 32-911(3) which reads:

'(3) 'Patient' means any person who seeks hospitalization or treatment under the provisions of this chapter or any person for whom such hospitalization or treatment is sought.' (Emphasis added)

Act No. 1230 of 1968 appears within the above mentioned chapter—Chapter 4, Article 32, SOUTH CAROLINA CODE, 1962—only unofficially (currently as Sections 32-993.1 et seq.), and therefore patients admitted to the Alcohol & Drug Addiction Center are not 'patients' as defined in Section 32-911(3). Indeed Act No. 1230 of 1968 has its own definition of 'patient' in Section 1(5) and does provide certain rights and privileges within Section 17 and 18.

Notwithstanding this technical distinction between an 'unofficial' and an 'official' portion of Chapter 4 of Title 32, the intent of Act No. 1158 of 1974 may well be construed to apply these sections to all patients of the Department of Mental Health. Furthermore, the rights and privileges conferred on mental patients by Act No. 1158 of 1974 were modelled after California and District of Columbia laws, which in turn were modelled after current trends in the Federal Courts interpreting constitutionally guaranteed patient rights. Consequently, many portions of Sections 32-994 through 32-999 are constitutionally required regardless of codification in state law. Sections 32-994, 32-995, and 32-997 are found as required in [Wyatt v. Stickney, 344 F. Supp. 373 \(1973\)](#), which has been upheld as [Wyatt v. Aderholt](#) by the Fifth Circuit Court of Appeals. Likewise, Sections 32-996 and 32-998 find their roots within [Stanley v. Georgia, 394 U.S. 557 \(1969\)](#) and also within [Wyatt](#). As for Section 32-999, see [Wyatt, Sauder v. Brennen, 367 F. Supp. 812 \(1973\)](#), and U. S. Department of Labor Regulations as to minimum wages.

Significantly, Wyatt stated that there is no logical reason not to extend the same rights and privileges that are constitutionally required for the mentally ill to the mentally retarded. This rationale may easily be extended to cover alcoholics and drug addicts, who are involuntarily committed to long term care in a State institution and who are not laboring under a sentence of law from a criminal conviction.

*2 With this in mind, it is the opinion of this Office that certain portions of Act No. 1158 of 1974 should be applied to the patients of the Alcohol & Drug Addiction Center, to wit: Sections 32-995 through 32-999. Section 32-994 is excluded because it has reference to strictly psychiatric forms of treatment. Section 32-1000 is excluded, because it provides criminal penalties, and therefore, must be strictly construed. Section 32-1000.1, however, is applicable to the Alcohol & Drug Addiction Center, because this section speaks to patients and prisoners 'under the jurisdiction of the South Carolina Department of Mental Health, at any of its facilities', therefore, it does not exclusively rely on the Section 32-911(3) definition of a patient.

Mr. Creech indicated that if Section 32-995 were found applicable, it would need interpretation as it pertains to the practice of locking the Alcohol & Drug Addiction Center patients in cottages. This section provides:

'No patient shall be subjected to mechanical restraint, corporal punishment, seclusion or any form of physical coercion or restraint unless such action has been authorized by the attending physician as being required by the medical needs of the individual. The authorization and reasons for it shall be entered into the individual's record. Such authorizations shall not be valid for more than forty-eight hours. Provided, that in case of emergency such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide, if the superintendent or the designated physician is not available, nonchemical means of restraint may be used. Such use must be reported within eight hours thereafter to the superintendent or designated physician who shall authorize its continuance or cessation and shall make a written record of the reasons for any such use and of his review.'

It is the opinion of this Office that Section 32-995 is not violated by minimum security measures such as locked cottages, with 24 hour supervision, or for that matter locked wards within a State hospital. The Department of Mental Health has the implied authority and the duty from the admitting court of an involuntary patient to take those steps necessary to insure that the involuntary patient remains for treatment. For to say otherwise would render all but the voluntary admissions pointless. Section 32-995 comes into play when more restrictive measures are applied, as are spelled out within that Section.

I hope that this letter satisfactorily answers your inquiry if not please correspond.

With best wishes, I am

Very truly yours,

Harry B. Burchstead, Jr.
Assistant Attorney General

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