



ALAN WILSON  
ATTORNEY GENERAL

June 25, 2020

The Honorable Micajah P. "Micah" Caskey, IV  
Member  
South Carolina House of Representatives  
District No. 89  
P.O. Box 5875  
West Columbia, SC 29171

Dear Representative Caskey:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

I received the enclosed email from a constituent who asked me to request an opinion from you regarding the role, duties, and responsibilities of the Department of Mental Health (DMH) Director and Commission so that employees of DMH can better ascertain when and how to approach the Director and Commission members when a need to do so arises.

Therefore, please accept this letter as my request for an opinion pursuant to South Carolina Code of Laws Title 44, § 44-9-30 and 44-9-40 and any other applicable sections of the South Carolina Code of Laws.

The constituent's email states that an employee with the DMH attempted to raise safety concerns regarding another employee's treatment of patients. It further conveys that attempts to escalate those concerns to the DMH Commission were unsuccessful because the matter was a personnel issue in which "the Commission plays no role." Ultimately, the email requests an opinion regarding the "role, duties, and responsibilities of [the] Mental Health Commission and State Director of DMH" which specifically includes an interpretation of S.C. Code §§ 44-9-30, -40.

### Law/Analysis

The constituent's email raises two related issues regarding (1) the authority to make personnel decisions for the State Department of Mental Health's (the "DMH") officers and employees and (2) how to report issues related to patient care. This opinion will outline relevant statutory authority to address these issues.

The DMH is governed by the South Carolina Mental Health Commission (the "Commission"). S.C. Code § 44-9-30(A)(1). The Commission is statutorily directed to "determine policies and promulgate regulations governing the operation of the department and the employment of professional and staff personnel." S.C. Code § 44-9-30(C).<sup>1</sup> The Commission is further tasked with appointment and removal authority for the State Director of Mental Health (the "Director"). S.C. Code § 44-9-40. The Director is responsible for administering the policies and regulations established by the Commission. See id. The Director is also directed to "appoint and remove all other officers and employees" of the DMH. Id. This appointment and removal authority is, however, subject to the approval of the Commission. Id. Further, the Director is authorized to appoint a director to each hospital under the DMH's jurisdiction. S.C. Code § 44-9-60. These directors are "responsible for the employment of all personnel" at the hospitals or other facilities that they oversee. Id. These hospital directors' discretion regarding employment is subject to the Director's approval. Id. Based on these authorities, personnel decisions concerning employees within a DMH facility are initially considered by a hospital director, where applicable. The hospital director's personnel decisions are subject to the Director's approval which, in turn, are ultimately subject to the Commission's approval. See S.C. Code §§ 44-9-40, -60.

The Commission is authorized to hear and investigate complaints about patient care. See S.C. Code § 44-9-100 ("The commission may: ... (3) investigate complaints made by a patient or by a person on behalf of a patient."). Moreover, the DMH was statutorily required to "develop a system for documenting and addressing grievances concerning patient rights." S.C. Code § 44-22-220(A). The DMH was also required to "develop procedures with time lines to process the grievances in a timely manner. The procedures must be made known to patients." S.C. Code § 44-22-220(B). The DMH's website includes a bullet list of patient rights while the patient is in a DMH hospital or other in-patient facility. See Patients' Rights and Responsibilities while in a DMH Hospital, [https://scdmh.net/patients\\_families/patient-advocacy-2/3794-2/](https://scdmh.net/patients_families/patient-advocacy-2/3794-2/) (last visited June 24, 2020). The listed rights specifically include the right "to a safe and humane environment." Id. The website further states that if a patient feels their rights are being violated, complaints may be registered with the Patient Advocacy Program. This program appears to be designed to

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<sup>1</sup> It is this Office's understanding that the Commission has not promulgated regulations addressing the hiring or removal of officers and employees. See S.C. Code Ann. Regs. Ch. 87.

comply with S.C. Code § 44-22-220. Therefore, one avenue for reporting staff mistreatment of patients is to register a complaint through the Patient Advocacy program. The DMH may have established procedures specifically designed for officers and employees to report incidents of patient mistreatment. Questions regarding internal reporting procedures can likely be answered by the DMH's human resources personnel.

### Conclusion

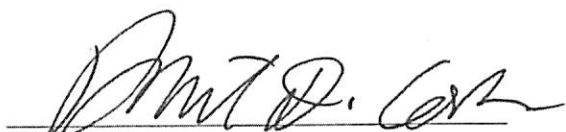
As is discussed more fully above, it is this Office's opinion the South Carolina Mental Health Commission (the "Commission"), the State Director of Mental Health (the "Director"), and hospital directors are involved in personnel decisions regarding the hiring and removal of State Department of Mental Health ("DMH") officers and employees. Personnel decisions concerning employees within a DMH facility are initially considered by a hospital director, where applicable. The hospital director's personnel decisions are subject to the Director's approval which, in turn, are ultimately subject to the Commission's approval. See S.C. Code §§ 44-9-40, -60. Further, the Commission is authorized to hear and investigate complaints about patient care. See S.C. Code § 44-9-100 ("The commission may: ... (3) investigate complaints made by a patient or by a person on behalf of a patient."). Moreover, the DMH was statutorily required to "develop a system for documenting and addressing grievances concerning patient rights." S.C. Code § 44-22-220(A). Registering a complaint through the Patient Advocacy program is one avenue for reporting staff mistreatment of patients. Questions regarding internal reporting procedures can likely be answered by the DMH's human resources personnel.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General