

1984 S.C. Op. Atty. Gen. 201 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-81, 1984 WL 159888

Office of the Attorney General

State of South Carolina

Opinion No. 84-81

July 23, 1984

\*1 The Honorable Raymond C. Eubanks, Jr.  
Probate Judge  
County of Spartanburg  
Spartanburg County Courthouse, Room 185  
Spartanburg, SC 29301

Dear Judge Eubanks:

In your letter of May 8, 1984, you have inquired as to what action the hospital and Probate Court should take when a detained person refuses to be examined by a doctor chosen by the family or friends or when the detainee requests a particular doctor. You have also inquired as to what action the hospital and Probate Court should take under the same set of circumstances when the detainee is a minor.<sup>1</sup>

The basis for your inquiry is the procedure for emergency admission of persons likely to cause serious harm set forth in [§ 44-17-410, South Carolina Code of Laws \(1976\)](#), as amended. This procedure allows for the immediate admission of a person to a state hospital or mental health facility upon written affidavit of any person stating his belief that the person is mentally ill and likely to cause serious harm to himself or others if not immediately hospitalized, the specific type of serious harm thought probable, and the factual basis for this belief. In addition to this affidavit, there must be a certificate by a licensed physician stating that he has examined the person and is of the opinion that he is mentally ill and because of this condition is likely to cause harm to himself or others. [Section 44-17-430, South Carolina Code of Laws \(1976\)](#), as amended, provides a method whereby an examination of a person requiring immediate hospitalization can be obtained when an examination is not otherwise possible. Under the guidelines of this section, upon receipt of the affidavit set forth in [§ 44-17-410](#) with an explanation for the reason the usual procedure for examination cannot be followed, the Probate Judge may issue a 'detention order' requiring the individual to be taken into custody and examined by a licensed physician. Neither the voluntary submission to examination by a licensed physician set forth in [§ 44-17-410](#) nor the involuntary submission to examination under a 'detention order' set forth in [§ 44-17-430](#) specifically address the issue of who shall designate the licensed physician. Pursuant to [§ 44-17-430](#), the authority to issue a 'detention order' for the purpose of having the detainee submit to a mental examination, clearly lies with the Probate Judge. In order to achieve this purpose, the ultimate responsibility of determining who will conduct the mental examination must also rest with the Probate Judge. As you pointed out in your letter, the reason for the issuance of a 'detention order' in the first place is because the person refuses treatment or lacks insight to seek treatment, and to allow the detainee to refuse to be examined by a chosen physician could thwart the entire procedure. There is, however, no prohibition against the Probate Judge giving deference to the selection of a physician by the family, friends attorney or the detainee, but the Probate Judge should assume the responsibility of making the final decision, and this responsibility is the same regardless of whether the detainee is a minor or not.

\*2 I hope this information sufficiently answers your inquiries. Please let me know if we can be of further assistance.  
Sincerely,

B. J. Willoughby  
Assistant Attorney General

Footnotes

- 1 The legal advice given in this letter is directed to the Probate Court to provide assistance in determining the proper official action to be taken under the circumstances related in your questions. This letter does not attempt to address the proper action and responsibilities of the hospital.

1984 S.C. Op. Atty. Gen. 201 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-81, 1984 WL 159888

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.