

1981 WL 157929 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 21, 1981

**\*1 RE: Opinion Request**

The Honorable Louis L. Rosen  
Assistant Director  
South Carolina Court Administration  
Post Office Box 11788  
Columbia, South Carolina 29211

Dear Mr. Rosen:

In your letter of July 23, 1981, you requested an opinion concerning whether it would be a violation of a patient's right to due process and a conflict of interest if staff physicians of a state mental institution conduct commitment examinations and participate as expert witnesses in the Probate Court in the commitment proceeding of a patient. Our research indicates that it would not.

No authority located supports the proposition that a commitment examination conducted by a staff physician of a state institution [to which commitment may ultimately be made by the Probate Judge] violates a patient's right of due process of law. The Supreme Court's opinion in Parham v. Minor, 422 U.S. 584 (1979), strongly suggests that such procedure is not violative of due process. In Parham, the Court noted in its review of a constitutional challenge to Georgia's commitment statute that a staff physician of the state of Georgia could conduct the commitment examination and make the commitment decision so long as '... he or she is free to evaluate independently the child's mental and emotional condition and need for treatment.'

The Court rejected the notion that the staff physician who participates in the admission process is oblivious or indifferent to the individual's welfare. In Parham, the commitment decision was based solely upon the decision of the staff physician and the court concluded that this process did not violate the patient's due process. In South Carolina, the staff physician participates only as a court appointed expert witness and the final decision concerning commitment rests with the Probate Court after consideration of all the evidence. The commitment process includes the full parameter of procedural safeguards whereby the person alleged to be mentally ill may confront and cross examine any of the witnesses including the appointed physicians. See, Articles 5 and 9 of Title 44, South Carolina Code of Laws, 1976, as amended.

As to a possibility of an unlawful conflict of interest created by the participation of a staff physician in the commitment process, it is difficult to see the problem. The staff physician has no financial interest in a private facility to which commitment is made (compare, e.g., Maber v. Rankin, 358 P.2d 681), and in addition, the admitting facility is designated by the Probate Judge, and not by the expert examiners. See, § 44-17-610.

In summary, it is the opinion of this office that the use of a state physician in the commitment procedure as a court appointed expert does not violate the patient's right of due process or result in an unlawful conflict of interest even if the state physician may later assist in providing treatment for the committed individual.

**\*2** You have additionally asked the meaning of the term 'internship' and 'residency' as they are used in the proviso within § 155 of R232 of 1981 Acts and Joint Resolutions [the State Appropriations Act]. Absent any particular definition applied by the legislature, the terms must be used in their common and ordinary meanings. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206; Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736. Nothing in § 155 indicates a legislative intent to define these terms

in other than their ordinary meaning. The term 'internship' is defined as '. . . the position of an intern', Webster's New World Dictionary (2d College Ed.) 736, with the term 'intern' being defined as 'a doctor serving an apprenticeship as an assistant resident in a hospital, generally just after graduation from medical school.' Webster's, [supra 735-36](#). 'Residency' is defined as 'a period of advanced, specialized medical or surgical trainee at a hospital.' Webster's, [supra 1209](#). See Also, Doctor's Hospital v. Board of Tax Appeals, 181 N.E.2d 782.

Though in a technical sense internship and residency may be applicable to professions other than the medical profession, the terms are generally applied to physicians and it appears that this usage in the context of the proviso of § 155 is consistent with the legislative intent. This is supported in that § 155 is directed to utilization of the services of designated examiners employed by the state. By statute [§ 44-23-10(8)] all physicians licensed in South Carolina are qualified designated examiners. Thus, it becomes clear that the use of these terms therein applies solely to medical doctors. All other designated examiners must meet certain specified educational and experience requirements and be registered by the Department of Mental Health.

In conclusion, it is the opinion of this office that the terms 'internship' and 'residency' as used in the proviso of § 155 of R232 apply only to physicians serving as interns and residents.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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