

1977 S.C. Op. Atty. Gen. 300 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-375, 1977 WL 24712

Office of the Attorney General

State of South Carolina

Opinion No. 77-375

November 30, 1977

*1 TO: John Patrick, Esquire
South Carolina Court Administration

QUESTIONS:

1. May a patient conditionally discharged from the Department of Mental Health be committed without the necessity of re-examination?
2. May a patient involved in a Court ordered outpatient treatment program be committed to an in-patient facility without being re-examined?
3. Will a determination of sanity by a Probate Court be res judicata and bar subsequent petitions?

AUTHORITIES CITED:

§§ 44-17-10, et seq., Code of Laws of South Carolina, 1976, as amended; Jackson v. Indiana, 406 U.S. 115; Humphrey v. Cady, 405 U.S. 504; Donaldson v. O'Conner, 422 U.S. 563; Morrisey v. Brewer, 404 U.S. 471; Cruz v. Ward, 424 F. Supp. 1277; Doremus v. Farrell, 407 F. Supp. 509; Meisel v. Kremens, 405 F. Supp. 1253; Eubanks v. Clarke, 46 L.W. 2026 (U.S.D.C.).

DISCUSSION:

1. The Department of Mental Health does not conditionally discharge patients. The provisions of Act #99 of 1977 repealed all procedural references relative to the return of a conditionally discharged patient to a facility within the Department of Mental Health. As such, commitment of an individual who has previously been discharged from the Department of Mental Health would have to be in accordance with regular commitment statutes, generally §§ 44-17-510 through 44-17-610, Code of Laws of South Carolina, 1976, as amended. Failure to fulfill 'conditions of discharge' does not constitute grounds for commitment. A requisite finding in accordance with § 44-17-580, Code of Laws of South Carolina, 1976, as amended, is necessary prior to any civil commitment.

2. The Court of Probate may order out-patient treatment in lieu of in-patient treatment pursuant to § 44-17-580 of the 1976 Code, as amended. In-patient treatment may thereafter be ordered only after a hearing. The placement of an individual of out-patient status in an in-patient treatment program involves a substantial reduction in said individual's freedom. Accordingly, due process requires various safeguards including notice and a hearing. Cf. Eubanks v. Clarke, 46 L.W. 2026 (U.S.D.C. E.Pa.); Cruz v. Ward, 424 F. Supp. 1277; Morrisey v. Brewer, 408 U.S. 471; Meisel v. Kremens, 405 F. Supp. 1253; Jackson v. Indiana, 406 U.S. 115. Although, not totally applicable, § 44-23-210 of the 1976 Code, as amended, reveals a legislative scheme consonant with the idea that persons placed in more restrictive treatment settings should be accorded similar procedural rights to those initially committed. In addition, involuntary commitment cannot be consummated without a requisite finding pursuant to amended § 44-17-580, that is, the individual is mentally ill and:

1. lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or

2. there is a likelihood of serious harm to himself or others . . .

*2 The purpose of civil commitment is treatment, not punishment. Section 44–17–650, Code of Laws of South Carolina, 1976, as amended; [Donaldson v. O'Conner](#), 422 U.S. 563. And, therefore, prior to commitment the need for commitment must be established satisfying the requisites prescribed by § 44–17–580. As such, the need for commitment cannot be established by solely determining that an individual failed to follow a prescribed out-patient program, a present determination of mental illness together with (1) or (2) cited herein above must be made. Such determination may be made only after following the prescribed statutory procedures in §§ 44–17–510, *et seq.*

3. Res judicata generally is not applicable in commitment proceedings. Mental illness is not a static condition subject to a one time adjudication.

CONCLUSIONS:

Individuals are no longer conditionally discharged from the Department of Mental Health. A discharged patient can be committed only in accordance with regular commitment statutes.

An individual involved in an involuntary out-patient treatment program cannot be committed to an in-patient treatment without a determination pursuant to § 44–17–580.

Res judicata is generally not applicable in commitment proceedings.

Edwin E. Evans
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