

1975 WL 29013 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
July 16, 1975

*1 J. C. McAlpine, M.D.
McAlpine & Howell Internal Medicine Associates, P.A.
210 Market St.
Bennettsville, South Carolina 29512

Dear Dr. McAlpine:

Your letter of inquiry dated June 24, 1975 to the Attorney General has been referred to me for reply. This office is limited to giving official opinions only to public officials, however, you have asked certain questions that are of public interest, which I will answer informally.

1. You inquired as to why the psychiatrists of the State Hospitals are not the designated examiners for emergency admittees who are returned for civil commitment proceedings in the Probate Court. This is the case because of certain legal and practical considerations.

Since the State Hospitals' staffs have the power to discharge a patient at any time, the very fact that an emergency patient is retained long enough to necessitate a full hearing in the Probate Court presupposes what the examination results and testimony of a staff member would be. Therefore, 'outside examiners' offer testimony that is not influenced by the hospitals decision to retain the patient. Otherwise, the procedure would run the risk of being construed as violative of the individual's right to equal protection under the 14th Amendment of the United States Constitution, since the nonemergency patient receives 'outside' examinations.

Practically, with around ten court hearings being held daily state-wide, a requirement that state hospital staff psychiatrists appear in each matter, would prevent the Department of Mental Health from accomplishing its primary purpose to provide mental health care and treatment for patients already within the institutions.

2. You inquired as to whether the Report of the Designated Examiners as it appears on SCDMH Form M-122B ('the blue form') is worded in a misleading fashion. Specifically you were concerned whether a mentally ill person who is not in need of hospitalization should be certified as 'mentally ill' on this report.

The form itself fails to make it clear that the term 'mentally ill' on this report is to be construed in light of the statutory definition, Section 32-911(1), SOUTH CAROLINA CODE, 1962, as amended. Section 32-911(1) reads: "Mentally ill person' means a person afflicted with a mental disease to such an extent that, for this own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization.'

However, it should be noted that the Order for Examination by Two Designated Examiners requires a finding as to the individual's mental condition and need for treatment.

This language allows a certification of mental illness in cases where hospitalization is not an absolute necessity in the opinion of the examiner, requiring rather that the examiner be satisfied that the individual is in need of some type of care and treatment for his mental disorder.

It is the responsibility of the Probate Judge to determine after hearing all the testimony whether an institutionalized setting is required for the individual, weighing all factors to include the appropriateness and availability of out-patient care.

*2 3. The questions as to your general liability in certain matters are difficult to answer, and any opinion would still be open to considerable doubt. However, the legislature has provided immunity for physicians in one of the possible situations you illustrated. Where the patient is set free and does some type of harm to other persons, Section 32-993, SOUTH CAROLINA CODE, 1962, as amended, would protect all persons who participated in a release that took place pursuant to an order by the Probate Judge. Section 32-993, provides:

'Neither the superintendent of a mental health facility nor any other person legally participating in the release or discharge of a patient shall be liable either civilly or criminally on account of such participation.'

4. I believe that your fourth inquiry is answered in the response to your first question.

Please feel free to contact me should you have any further questions as to the mental health laws.

Very truly yours,

Harry B. Burchstead, Jr.
Assistant Attorney General

1975 WL 29013 (S.C.A.G.)