



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

October 28, 1994

Mr. Dennis R. Jones  
Commissioner  
Texas Department of Mental  
Health and Mental Retardation  
P.O. Box 12668  
Austin, Texas 2668

Letter Opinion No. 94-073

Re: Representation of a state-employed  
physician who fills a petition under section  
574.104, Health and Safety Code, to admin-  
ister psychoactive medications  
(ID# 27283)

Dear Commissioner Jones:

You ask this office to construe sections 574.104 and 571.016 of the Texas Health and Safety Code, which form part of the Mental Health Code. In particular, you wish to know if a county or district attorney must represent a state-employed physician who petitions a court with probate jurisdiction to obtain an order to administer psychoactive medication to a patient who refuses such medication.

Subchapter G of chapter 574 of the Mental Health Code concerns the administration of medication to patients who are subject to an order for inpatient mental health services. Such a patient has a right to refuse psychoactive medication; such medication may only be administered involuntarily to the patient, by the terms of section 574.103, if there is a "medication-related emergency," or if the court has issued an order authorizing such administration. The procedure for obtaining such an order is outlined in sections 574.104 through 574.106. Briefly, a physician may petition a probate court or court with probate jurisdiction to authorize such administration to a patient who is undergoing court-ordered inpatient mental health services if the physician believes that the patient lacks the capacity to make a decision regarding the administration, and "determines that the medication is the proper course of treatment for the patient." The patient has certain procedural rights in the event of a hearing on such a petition, including a right to counsel, certain notice rights, a right to be at the hearing, and a right to request an independent expert. An order may issue only if the court finds by clear and convincing evidence both that the patient lacks the requisite capacity and that the proposed treatment is in the patient's best interest.

You ask whether section 571.016 of the Mental Health Code requires a county or district attorney to represent a state-employed physician who files a petition under section 574.104 in the hearing required by section 574.106.

Section 571.016 reads as follows:

In a hearing on court-ordered mental health services held under this subtitle:

- (1) the county attorney shall represent the state; or
- (2) if the county has no county attorney, the district attorney shall represent the state.

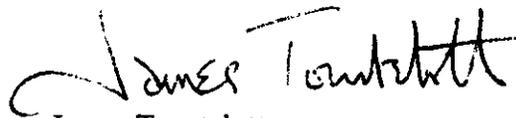
A hearing of the sort required by section 574.106 is manifestly held under the Mental Health Code. Accordingly, our inquiry has two parts. First, is such a hearing one "on court-ordered mental health services?" Second, is a state-employed physician who petitions the court acting as an agent of the state in so doing?

We think the answer to both questions is plainly affirmative. The administration of psychoactive drugs is a mental health service, and the hearing is to seek a court order to require such administration. Further, the state-employed physician is acting under the color of his authority as an agent of the state in seeking such an order. Accordingly, section 571.016 requires the county or district attorney to represent a state-employed physician seeking an order under section 574.106 to administer psychoactive drugs to a patient subject to a court order for inpatient mental health services who refuses such drugs.

### S U M M A R Y

Section 571.016 of the Mental Health Code requires a county or district attorney to represent a state-employed physician who petitions a court with probate jurisdiction to issue an order under section 574.106 of the Mental Health Code permitting the involuntary administration of psychoactive drugs to a patient subject to a court order for inpatient mental health services.

Yours very truly,



James Tourtelott  
Assistant Attorney General  
Opinion Committee