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OPINION COMMITTEE

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November 25, 2002

RQ-0003-GA



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The Honorable John Cornyn
Attorney General of Texas
Price Daniel Sr. Building
209 West 14th, 8th Floor
Austin, Texas 78711-2548

FILE # ML-42913-02
I.D. # 042913

Dear Attorney General Cornyn:

Texas Health and Safety Code, §§572.001-572.003, describes the process for the voluntary admission of a patient to an inpatient mental health facility. An "inpatient mental health facility" is defined in Texas Health and Safety Code, §571.003, as a mental health facility that can provide 24-hour residential and psychiatric services and that is:

- (1) a facility operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR);
- (2) a private mental hospital licensed by the Texas Department of Health (TDH);
- (3) a community center, facility operated by or under contract with a community center or other entity TDMHMR designates to provide mental health services;
- (4) a local mental health authority or a facility operated by or under contract with a local mental health authority;
- (5) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by TDH; or
- (6) a hospital operated by a federal agency.

Texas Health and Safety Code, §572.0025(f)(1), states that an order admitting a prospective patient to an inpatient mental health facility must be from an admitting physician who has conducted or who has consulted with a physician who has conducted "an in-person physical and psychiatric examination" within 72 hours of the admission.

Two interpretations of the statutory requirement of an "in-person" examination have emerged. One interpretation is that the term "in-person" means that only a physician may conduct the examination, therefore, prohibiting the physician from delegating the examination to a qualified person in accordance with Texas Occupations Code, §157.001. (This section of the Occupations Code authorizes a physician to delegate

medical acts to a qualified and properly trained person under the supervision of the physician.)

The other interpretation is that "in-person" does not prohibit the delegation of the examination but simply means that an examiner must conduct the examination in the presence of the prospective patient. The second interpretation would, therefore, allow a physician to delegate the examination to a qualified person in accordance with Texas Occupations Code, §157.001. This interpretation also raises the question of whether the requirement that the examination be "in-person" allows for the examination to be conducted using audiovisual telecommunication. TDMHMR believes that the use of such telecommunication is appropriate because it allows the examiner to interact with the prospective patient in much the same manner the examiner would if he or she was in the actual physical presence of the prospective patient, thereby, allowing the examiner to conduct an authentic clinical examination. In addition, because the use of audiovisual telecommunication obviates the need to transport prospective patients to the physical location of an examiner, a mental health facility is able expedite the provision of mental health services to individuals who need them.

Understanding the meaning of an "in-person" examination is important to TDMHMR because it operates inpatient mental health facilities. Further, TDMHMR is required to adopt rules it considers necessary to ensure the proper care and treatment of patients in private mental hospitals and mental health facilities licensed under Texas Health and Safety Code, Chapter 577, including rules governing the voluntary admission process, in accordance with Texas Health and Safety Code, §572.0025(a) and §577.010(a).

Your advice and counsel, therefore, are respectfully requested regarding the following questions:

- 1) Does the requirement in Texas Health and Safety Code, §572.0025(f)(1), that the physical and psychiatric examination be "in-person" mean that only a physician may conduct the examination and, therefore, that the physician is prohibited from delegating the examination in accordance with Texas Occupations Code, §157.001?
- 2) If your answer to the first question is "no" and you determine that the term "in-person" means that the examiner must conduct the examination in the presence of the prospective patient (and, therefore, that a physician is not prohibited from delegating the examination), does the term "in-person" prohibit the examination from being conducted using audiovisual telecommunication?

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Because your answer to these questions may bear on issues considered by the Texas legislature in the upcoming session, I appreciate your expediting the response to this request, if possible. Enclosed, for your information, is a list of persons and organizations who have an interest in TDMHMR's rules regarding standards of care for private mental hospitals and mental health facilities licensed under Texas Health and Safety Code, Chapter 577.

Sincerely,



Karen F. Hale
Commissioner

KFH:LS:BK
Enclosure

Interested Persons and Organizations:

Aaryce Hayes, Advocacy, Inc.
Beth Mitchell, Legal Counsel, Advocacy, Inc.
Tracy Levins, Texas Youth Commission (TYC)
Tom Little, TYC
Martha Leatherman, Texas Society of Psychiatric Physicians (TSPP)
John Bush, Executive Director, TSPP
Matt Wall, Legal Counsel, Texas Hospital Association (THA)
Susan Jones, Policy Analyst, THA
Clair Jordan, Executive Director, Texas Nurses Association (TNA)
Jim Willmann, Legal Counsel, TNA
Theresa Harding, Assistant to Clair Jordan
Lynda Woolbert, Coalition of Nurses in Advanced Practice
Mike Halligan, Texas Mental Health Consumers
Lee Redmond, Texas Mental Health Consumers
Judge Guy Herman
Reid Minot, Seton Shoal Creek Hospital
Andrew Prough, Citizens' Commission on Human Rights
Kim McPherson, Mental Health Association
Melanie Gant, Mental Health Association
Diana Kern, National Alliance of Mentally Ill (NAMI) Texas
Lyn Lasky, NAMI Texas
Robert Stluka Jr., Texas Academy of Psychiatric Assistants (TAPA)
Ted Williams, TAPA
Sam Stone, Legal Counsel, TAPA
Ben Marroquin, Psychiatric Surveyor, Texas Department of Health (TDH)
Suzanne Kayser, Psychiatric Surveyor, TDH
Patrick Waldron, Psychiatric Surveyor, TDH
John Evans, Director of Hospital Licensing, TDH
Sharon Murdoch, Assistant to John Evans
Susan Hickey, Assistant to John Evans
Nance Stearman, Director of Health Facility Compliance, TDH
Marc Connelly, Legal Counsel, TDH
Carol Vetter, Director of Enforcement, TDH