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DEPARTMENT OF JUSTICE

CIVIL DIVISION

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BATON ROUGE

70804-9005

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OPINION 15-0171

64-1-C MENTAL HEALTH

La. R.S. 28:53

Mr. Jeffrey Rouse, MD
Coroner, Parish of Orleans
3001 Earhart Blvd.
New Orleans, LA 70125

A person voluntarily requesting mental or substance abuse treatment at a hospital cannot be considered "unwilling or unable to seek voluntary admission" under La. R.S. 28:53(B)(2)(e), even if the medical facility is unable or unwilling to admit the person for psychiatric care because it lacks a psychiatric ward. Further, a Physician's Emergency Certificate executed under these circumstances is invalid because the requirement in La. R.S. 28:53(B)(2)(e) is not met.

Dear Dr. Rouse:

As the Coroner of the Orleans Parish, you have requested an Attorney General's opinion concerning the validity of executing a Physician's Emergency Certificate ("PEC") to a person voluntarily seeking admission to a hospital. Specifically, you ask whether such person qualifies as being "unwilling or unable to seek voluntary admission" under La. R.S. 28:53(B)(2)(e) when the following conditions occur:

- (1) The person appears to be willing and cognitively [able] to seek voluntary treatment; and
- (2) The hospital is unable and/or unwilling to admit the person for psychiatric care on a voluntary basis because the facility lacks a psychiatric ward.

Your interpretation of the statute is that "because the person has presented to a facility that lacks a psychiatric ward and the facility is therefore unable and/or unwilling to admit the person on a voluntary basis, the person is 'unable to seek voluntary admission' under La. R.S. 28:53(B)(2)(e), even though the person is willing and cognitively able to seek voluntary treatment." (Emphasis added).

In order to address your question, we must analyze the language of the relevant provisions under the rules of statutory interpretation. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature. When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law, and the words of law must be given their generally prevailing meaning. When the words of a law are ambiguous, their meaning must be sought by examining the context in

which they occur and the text of the law as a whole, and laws on the same subject matter must be interpreted in reference to each other. *Pumphrey v. City of New Orleans*, 05-979 (La.4/4/06), 925 So.2d 1202, 1209-10.

La. R.S. 28:52 *et seq.* sets forth the methods of admission of persons suffering from mental illness and substance abuse to a hospital. In particular, La. R.S. 28:53 establishes the procedure of issuing a PEC to mentally ill persons in order to provide emergency treatment without their consent.

La. R.S. 28:53(A)(1) provides that "[a] person who is mentally ill or a person who is suffering from substance abuse may be admitted and detained at a treatment facility for observation, diagnosis, and treatment for a period not to exceed fifteen days under an emergency certificate." A physician, psychiatric mental health nurse practitioner, or psychologist can execute a PEC only after an actual examination of the person which determines that such individual is dangerous to self or others or is gravely disabled. La. R.S. 28:53(B)(1). Upon admission, the director of the treatment facility must notify the coroner of the parish in which the treatment facility is located. La. R.S. 28:53(G)(1). The coroner (or his deputy) has seventy-two hours to re-examine the individual and to re-execute a PEC. La. R.S. 28:53(G)(2). However, if the coroner makes the initial examination and executes the first PEC, then the second examination must be made by a physician at the treatment facility where the person is confined within seventy-two hours. La. R.S. 28:53(G)(3). If, from his examination, the coroner concludes that the person is not a proper subject for emergency admission, then the person must be discharged. La. R.S. 28:53(G)(5).

Pursuant to La. R.S. 28:53(B)(2)(e), the PEC must include the examiner's certification stating that "the person is unwilling or unable to seek voluntary admission." Voluntary consent is determined by the ability of the individual to understand all of the following: (a) the treatment facility to which the patient is requesting admission is one for persons with mental illness or persons suffering from substance abuse; (b) he is making an application for admission; and (c) the nature of his status and the provisions governing discharge or conversion to an involuntary status. La. R.S. 28:52(G)(2).

It is important to note that all laws affecting the freedom or liberty of the citizens must be strictly construed. *Barthe v. Larquie*, 42 La. 131, 7 So. 80 (1890). The basis for a strict construction is the mandatory and exclusive nature of the language used in the statute. Since the above provisions directly affect the liberty of the person to be admitted, they must be interpreted in accordance with their precise language.

Therefore, to properly execute a PEC, the physician and the coroner's examination must conclude that the person is unwilling or unable to seek voluntary admission. Such a determination concerning the willingness or ability to seek admission must be based on the examiner's professional judgment leading to the conclusion that the person is refusing or is incapable of asking for medical treatment. The disposition of the hospital to grant or deny the person's petition for admission is irrelevant to this evaluations.

According to your request, mentally ill persons arrive at the hospital by ambulance "in need of immediate care and treatment" because they are either dangerous to themselves or to others. The person advises that he or she is willing and is cognitively able to seek voluntary treatment. Thus, guided by the rules of statutory interpretation noted above, we find the provision in question is clear and unambiguous. La. R.S. 28:53(B)(2)(e) places the requirement of being unwilling or unable on the individual himself, rather than on circumstances beyond the person's control. As such, that the medical facility is unable or unwilling to admit the person does not change the fact that the person is willing and able to seek admission on a voluntary basis. In other words, since the person is willing (consenting) and able (communicating) the need to obtain medical treatment, by definition such a person cannot be unwilling or unable to seek voluntary admission. The fact that the hospital denies admission because it does not have a psychiatric ward has no effect on the person's willingness or ability to seek admission voluntarily.

Therefore, it is the opinion of this office that if a medical examination concludes that a person is willing and able to seek voluntary treatment, such a person cannot be considered unwilling or unable to seek voluntary admission under La. R.S. 28:53(B)(2)(e), even when the medical facility is unable or unwilling to admit the person for psychiatric care because it lacks a psychiatric ward.

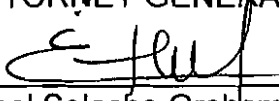
Based on the reasoning above, the law does not authorize a physician or a coroner to execute a PEC to a person who is willing and able to seek voluntary treatment because such person does not meet the requirement in La. R.S. 28:53(B)(2)(e). A PEC executed under these circumstances is invalid.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JEFF LANDRY
ATTORNEY GENERAL

By:


Ethel Solache Graham
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JL: ESG