



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

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ATTORNEY GENERAL

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ARIZONA ATTORNEY GENERAL

and

Honorable Jones Osborn
Arizona State Senator
Senate Wing, Capitol Building
Phoenix, Arizona 85007

Dear Mr. Berger, Ms. Silver and Senator Osborn:

This opinion combines questions posed separately by the Pima and Maricopa County Attorneys' offices. Because the questions are so interrelated they have been combined, re-phrased and are answered jointly.

The questions presented presuppose that a sheriff (or other law enforcement officer) in Arizona who has custody of a prisoner has the legal obligation to tender necessary medical services to that prisoner so as to keep him safe and protect him from harm. See Op. Atty. Gen. No. 72-6-L (R-19) previously recognizing this principle.

The first question presented involves several possible factual situations. May a sheriff force a prisoner to accept medical treatment against his wishes: (1) when a prisoner refuses treatment for a non-factual, non-contagious condition; (2) when a prisoner refuses treatment for a condition which is potentially fatal; and (3) when a prisoner refuses treatment for a contagious condition?

It is generally recognized that subject to limited exceptions, a competent adult may choose to accept or reject medical treatment. See e.g. Roe v. Wade, 410 U.S. 113



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(1973). This is inherent in the notion that an unconsented touching of the person is both a tort and an offense: battery. Riedisser v. Nelson, 111 Ariz. 542, 534 P.2d 1052 (1975). Whether an individual is competent to make such decision accepting or rejecting medical treatment is governed by portions of the probate code. A.R.S. §§ 14-5101 et seq. The potential problem of an emergency medical situation involving an allegedly incompetent person is addressed by A.R.S. § 14-5310. See also A.R.S. § 32-1471, Arizona's "Good Samaritan" statute.

No Arizona statute expressly grants authority to the sheriff to force a prisoner to accept medical treatment against his will. Whether convicted or merely awaiting trial, a prisoner does not lose all of his legal rights upon entering jail. Cf. Ferguson v. Cardwell, 322 F.Supp. 750 (D. Ariz. 1975). Included with the panoply of rights not lost, insofar as it is unrelated to the clear and present danger of imperiled jail security, is the right to accept or reject medical treatment.

No Arizona case law governs the right or obligation of a sheriff or any person similarly situated to force a prisoner to accept medical care. (But see Article 2 of § 8 of the Arizona Constitution (Right to privacy) and In the Matter of Karen Quinlan, N.J., A.2d (March, 1976). For a discussion of the conflicting law in other jurisdictions see the annotation set forth at 9 A.L.R.3d 1391, POWER OF COURTS OR OTHER PUBLIC AGENCIES, IN THE ABSENCE OF STATUTORY AUTHORITY, TO ORDER COMPULSORY MEDICAL CARE FOR ADULT.) Sound legal reasoning dictates that in the absence of any express legal authority on point in Arizona authorizing such actions by a sheriff, a court of competent jurisdiction and not the sheriff should make the decision whether the prisoner can be forced to accept involuntary treatment. Where the prisoner's condition involves, for example, a potential death from a "hunger strike" the danger of death would not ordinarily exist in minutes but rather hours or days. In such a situation we can imagine no good reason for failing to present this matter to a court.^{1/} Similarly where a poten-

1. To the extent that Op. Ariz. Atty Gen. R75-723, which authorizes involuntary force feeding of an inmate at the State Prison is the absence of a court order, is inconsistent, it is hereby overruled.

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tially permanently disabling condition would not cause irreparable injury within minutes if untreated, custodial authorities must seek judicial approval before proceeding. However, immediate or acute life threatening situations could occur which would not permit sufficient time for even an expedited informal presentation of the matter to a court. In these situations, the custodial officer should act to preserve life regardless of the prisoner's protestations and then, if appropriate, present the question of continued involuntary treatment to the court. Cf. Application of President and Directors of Georgetown College, Inc. 331 F.2d 1000, (D.C. Cir. 1964) cert denied 377 U.S. 978 (1964). Where no life threatening or infectious consequences would flow from nontreatment, however, the competent prisoner's request to be left untreated should be respected.

One exception to the general rule is triggered by the consequences which may ensue to other prisoners, jail personnel or the general public from nontreatment. It has long been recognized that a government entity may mandate compulsory medical care to prevent the spread of infectious disease. For example, in Jacobsen v. Massachusetts, 197 U.S. 11 (1905) the United States Supreme Court upheld the authority of Massachusetts to require compulsory smallpox vaccinations so as to protect the public against the danger of that disease.

A.R.S. § 36-621 addresses the question of infectious diseases:

A person who learns that a contagious, epidemic or infectious disease exists shall immediately make a written report of the particulars to the appropriate board of health or health department.

And A.R.S. §§ 36-624-631 prescribes the course of conduct then required of the appropriate local health agency. In that regard the status of jail inmate or free citizen at large is of no consequence.

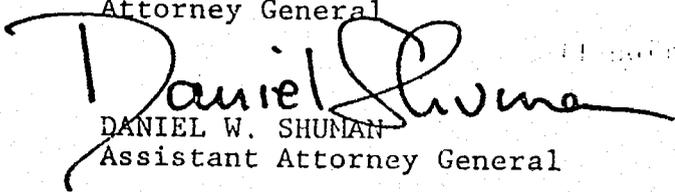
The foregoing answers are not affected by the state of the criminal proceedings; no statutory scheme imposes different responsibilities upon the county in these different situations.

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The duty of the counties in Arizona to care for the medically indigent is statutorily based upon A.R.S. §§ 11-291 et seq. which relate exclusively to indigents. Good Samaritan Hospital v. State ex rel Maricopa County, 18 Ariz.App. 321, 501 P.2d 949 (1972). Accordingly any duty to bear ultimate financial responsibility for medical services rendered to the non-indigent county jail inmate must be premised upon some independent duty. [For an example of such a duty in an analogous setting see A.R.S. § 31-201.01.D] Absent some independent duty which may arise in a specific situation (e.g. tort liability), a county is not required to bear ultimate financial responsibility for medical care rendered to non-indigent prisoners. [To the same effect see Op. Atty. Gen. No. 72-6-L (R19).] This is so whether the care was rendered on a voluntary or involuntary basis. Cf. Ginn v. Superior Court, 3 Ariz.App. 240, 413 P.2d 571 (1966). Any other result would mean that the need for expensive medical treatment coincidental with incarceration in the county jail would require the county to bear the ultimate financial responsibility for such treatment. Neither law nor logic compels such a result.

Sincerely,

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