



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

76-274  
R76-271  
BRUCE E. BABBITT  
ATTORNEY GENERAL

August 31, 1976

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**ARIZONA ATTORNEY GENERAL**

Mr. Ted Williams  
Deputy Director  
Arizona Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

Dear Mr. Williams:

On June 3, 1976, William D. Mack, then Acting Assistant Director for Behavioral Health Services, requested our opinion on the following question:

Can the Division of Behavioral Health Services, either directly or through the subvention method, provide medication to local community health centers to be given to the patients of those mental health centers so long as the mental health centers meet statutory requirements for receiving, holding, and/or dispensing medications?

Previously, in a letter to State Representative Ray Everett dated April 16, 1971, this office opined that the only statutory authority for the Arizona State Hospital "to deliver, purchase or develop outpatient mental health services" was the portion of the then existing mental health law (A.R.S. § 36-524.A) which authorized the "conditional discharge" of hospital patients into the community. Effective October 15, 1974 A.R.S. § 36-524 was repealed as one feature of a total revision of the mental health laws (Law 1974, Ch. 185 § 2). The revised mental health laws presently do not include the possible patient status of "conditional discharge" or anything analogous thereto. Accordingly, if everything else had remained constant we would be compelled, upon adherence to the April 16, 1971 opinion, to rule that such a proposed expenditure by the Arizona State Hospital is not authorized.



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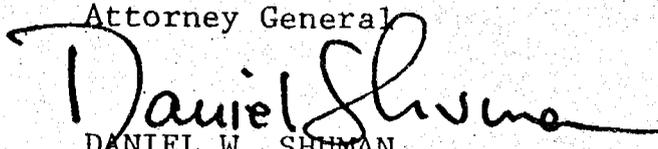
In 1971, when the previous opinion was issued, the Arizona State Hospital and the State Department of Health were separate agencies. A.R.S. § 36-189, as it then existed (Laws 1968, Ch. 118 § 1), permitted use of State Department of Health funds for local mental health services. Because the Arizona State Hospital was then a separate agency, it could not avail itself of this section. In 1973 the legislature mandated agency reorganization which included succession to the newly created Department of Health Services of the authority, powers, duties and responsibilities of the Arizona State Board of Health and the Arizona State Hospital. A.R.S. § 36-103.01, Laws 1973, Ch. 158 § 3. Simultaneously the legislature amended A.R.S. § 36-189 to substitute Department of Health Services wherever State Department of Health previously appeared. Laws 1973, Ch. 158 § 32. Therefore, to the extent permitted by A.R.S. § 36-189, the Arizona State Hospital as an organizational unit of the State Department of Health Services may now use funds at its disposal for local mental health services.

The language of A.R.S. § 36-189 is permissive and contemplates, but does not require, the use of funds by the Department of Health Services for the support of local mental health services. Specifically the statute states in subpart B that the "department of health services may use funds at its disposal . . . to contract for the establishment and maintenance of local mental health services. . . ." (Emphasis added) Neither a reading of this section nor any other statutory or constitutional provision appears to limit the department's authority in this specific context to use its funds to purchase drugs which would then be provided pursuant to an express A.R.S. § 36-189 contract in lieu of cash to the provider of local mental health services.

We therefore answer your question in the affirmative. If the local mental health center agrees to receive the medication in lieu of cash; if the various statutory requirements regarding possession, transportation, and dispensation of medications are met; and if the requirements of A.R.S. § 36-189 are otherwise met, you may under the authority of that statute provide medication to local mental health centers.

Sincerely,

BRUCE E. BABBITT  
Attorney General

  
DANIEL W. SHUMAN  
Assistant Attorney General

DWS:vld

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GARY K. NELSON  
THE ATTORNEY GENERAL  
FRANK SAGARINO  
CHIEF ASSISTANT ATTORNEY GENERAL

April 16, 1971

The Honorable Ray Everett  
ARIZONA STATE REPRESENTATIVE  
House Wing, Room 304  
1700 West Washington  
Phoenix, Arizona 85007

Re: Mental Health Services Distribution and  
Authority at Arizona State Hospital.

Dear Representative Everett:

In response to your letter of March 31, 1971, we submit  
the following.

The Legislature has provided that the Arizona State Hos-  
pital:

\* \* \* shall be maintained for the  
care and treatment of persons ad-  
judged mentally ill and other  
mentally diseased persons who are  
admitted thereto in accordance with  
law. \* \* \* (A.R.S. § 36-202.A)  
Emphasis supplied.

This language clearly defines the purposes for which the  
Arizona State Hospital is maintained. It makes no mention  
of community services. In fact, the only sections refer-  
ring to any type of outpatient services are sections 36-  
204 and 36-524.

A.R.S. § 36-204.A(3) provides that the State Hospital Board  
has the power and duty to "adopt rules and regulations for  
outpatient services". Although this section does not de-

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fine outpatient services or indicate who is eligible for them, the language of A.R.S. § 36-524.A casts some light on the matter. That section provides that the conditional discharge of patients is conditioned on the patient receiving "outpatient or nonhospital treatment or on \* \* \* other \* \* \* conditions \* \* \*."

In the final analysis, therefore, it is apparent that the various statutory provisions permit the State Hospital to provide mental health hospital service only to those patients committed or "admitted thereto in accordance with law", and outpatient services only to those patients on conditional discharge. There appears to be no statutory authority for the State Hospital in the rendering of community health services.

In relation to the Southern Arizona Mental Health Center, however, there appears to be no prohibition against the Center voluntarily admitting persons and then providing them with outpatient services. [A.R.S. § 36-502 permits the State Hospital to make voluntary admissions "pursuant to rules and regulations prescribed by the board". Providing the rules and regulations are complied with, the State Hospital or Center may voluntarily admit anyone requiring at least some degree of mental care.]

The answer to your question then is, that under current Arizona law, the State Hospital is not authorized to deliver, purchase or develop outpatient mental health services for anyone other than those patients committed or voluntarily admitted to the State Hospital.

Sincerely,

GARY K. NELSON  
The Attorney General



D. JAY RYAN  
Assistant Attorney General

DJR:PMM:ln

cc: Mr. John Holmes, Administrator  
Arizona State Hospital