

Attorney General

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Robert H. Corbin

June 6, 1989

The Honorable David S. Ellsworth
Yuma County Attorney
P.O. Box 1048
Yuma, Arizona 85366-8048

Re: 189-044 (R89-071)

Dear Mr. Ellsworth:

You have requested an opinion as to whether an Assistant Attorney General or Deputy County Attorney representing an individual or agency pursuant to A.R.S. § 36-503.01 in proceedings for court-ordered mental health evaluation or treatment is required to obtain a court order pursuant to A.R.S. § 36-509 before clinical records pertaining to the proposed patient may be released from such individual or agency to the attorney. We conclude that an Assistant Attorney General or Deputy County Attorney in the course of performing those duties prescribed by A.R.S. § 36-503.01 is entitled without a court order to obtain any of the patient's clinical records for the current admission. The released documents should include any past psychiatric records which were used in the screening and evaluation process conducted by the mental health treatment agency.

A.R.S. § 36-503.01 provides:

Whenever a physician or other person files a petition for court-ordered evaluation or court-ordered treatment on behalf of a state or county screening, evaluation or mental

health treatment agency, the attorney general or the county attorney for the county in which the proceeding is initiated, as the case may be, shall represent the individual or agency in any judicial proceeding for involuntary detention or commitment and shall defend all challenges to such detention or commitment.

Thus, a Deputy County Attorney or Assistant Attorney General must represent the petitioner in judicial proceedings for involuntary detention as well as in proceedings for involuntary commitment.

When a petition for court-ordered evaluation is filed and the court orders the detention of the proposed patient pending evaluation, A.R.S. § 36-529, the Deputy County Attorney or Assistant Attorney General is required to represent the petitioner at any hearing requested by the patient to challenge the detention order, A.R.S. § 36-503.01. If the agency conducting the evaluation files a petition for court ordered treatment pursuant to A.R.S. § 36-531(B), the attorney is also required by A.R.S. § 36-503.01 to represent the petitioner at the commitment hearing.

A.R.S. § 36-509 does not prevent disclosure of the patient's clinical records at detention or commitment hearings. A.R.S. § 36-509(A) provides, in pertinent part:

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the requirement of a hearing pursuant to this chapter may necessitate a different procedure.

(Emphasis added.)

In commitment hearings for court-ordered treatment, the clinical record of the patient for the current admission must be made available at the hearing and may be presented as evidence at the hearing at the request of the court, the Deputy County Attorney or the patient's attorney pursuant to A.R.S. § 36-539(B). The hearing for court-ordered treatment necessitates disclosure of the patient's record, and, therefore,

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disclosure would not be barred by A.R.S. § 36-509.^{1/}

Records of the current admission which may be accessed by the attorney are not necessarily limited to records made during the current admission. An evaluation consists in part of examinations by two physicians. A.R.S. § 36-501(11)(a). An examination includes "an exploration of the person's past psychiatric history." A.R.S. § 36-501(13). For this reason, the Arizona Court of Appeals has held that prior history which becomes important as part of the examinations conducted during the evaluation period are not protected from disclosure by A.R.S. § 36-509. In Re Matter of Pima County Mental Health No. MH-959-10-85, 149 Ariz. 7, 8, 716 P.2d 68, 69 (App. 1986). Therefore, any clinical records reflecting past psychiatric history relied upon by the physicians as a part of the examination should be made available to the Deputy County Attorney or Assistant Attorney General at a commitment hearing for court-ordered treatment.

Similarly, when a Deputy County Attorney or Assistant Attorney General is representing the petitioner in a hearing requested by the patient pursuant to A.R.S. § 36-529(D) to contest a detention order for evaluation, it is our opinion that the attorney is entitled to the same records used by the mental health agency in its decision to file a petition for involuntary evaluation.

A hearing to review the basis for court-ordered detention would necessitate a review of any records considered by the agency in their investigation which formed a basis for the mental health agency's decision to file for involuntary evaluation. Therefore, such records may be disclosed to the Deputy County Attorney or Assistant Attorney General without court order pursuant to A.R.S. § 36-509.

Sincerely,



BOB CORBIN
Attorney General

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^{1/} This same analysis can be found in Appeal in Pima County Mental Health Case No. MH-1717-1-85, 149 Ariz. 594, 596, 721 P.2d 142, 144 (App. 1986), in which the court held that a physician conducting a psychiatric examination is not barred from testifying by A.R.S. § 36-509 in hearings for court-ordered treatment because the hearing requires the testimony of the physician.