

## MENTAL HEALTH LAW

R.S. 28:64

### Ch. 1

custody was issued, to leave hospital and nurse was immune from liability for false imprisonment. *Romero v. Charter Behavioral Health*

System of Lake Charles, App. 3 Cir.2001, 00-1108 (La.App. 3 Cir. 1/31/01), 780 So.2d 530.

### § 64. Mental Health Advocacy Service; creation; board of trustees; organization; powers; duties

A. (1) A Mental Health Advocacy Service is hereby created and shall be governed by a board of trustees. The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(v).

(2) The service shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this Chapter, including, but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.

(3) The service shall be governed by a board of trustees consisting of nine members to be made up of the deans of the law schools or their designated faculty members from Loyola University of the South, Southern University and Agricultural and Mechanical College Law Schools and from the medical and law schools of Louisiana State University and Agricultural and Mechanical College and Tulane University of Louisiana, the president of the Mental Health Association of Louisiana or his representative, and a selected member from the Louisiana Medical Society and the Louisiana State Bar Association.

B. Members of the board shall be reimbursed actual expenses incurred in the performance of their duties.

The board of trustees shall:

- (1) Appoint a director of the service.
- (2) Establish general policy guidelines for the operation of the service to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their legal rights are protected. However, the board shall not have supervisory power over the conduct of particular cases.
- (3) Review and evaluate the operations of the service and emphasize special training for attorneys hired by the service.
- (4) Review and approve an annual budget for the service.
- (5) Review and approve an annual report on the operation of the service and submit such report to the legislature, the governor and the chief justice of the supreme court, and
- (6) Approve and authorize contractual arrangements sought by the director.

C. The director shall be an attorney at law licensed to practice in the state. The director shall be qualified by experience to perform the duties of his office. The director shall devote full time to the duties of his office and shall not engage in the private practice of law.

The director shall:

(1) Organize and administer programs to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their rights are protected, subject to the approval of the board of trustees.

(2) Identify the needs of mentally disabled persons for legal counsel and representation within the state and the resources necessary to meet those needs, subject to the approval of the board of trustees.

(3) Institute or cause to be instituted such legal proceedings as may be necessary to enforce and give effect to any of the duties or powers of the service.

(4) Hire and train attorneys and other professional and nonprofessional staff that may be necessary to carry out the functions of the service. All attorneys employed shall be licensed to practice law in Louisiana.

(5) Establish official rules and regulations for the conduct of work of the service, subject to the approval of the board of trustees.

(6) Take such actions as he deems necessary and appropriate to secure private, federal, and other public funds to help support the service, subject to the approval of the board of trustees, and

(7) The director may contract with organizations or individuals for the provision of legal services for the mentally disabled, subject to the approval of the board of trustees.

D. Any attorney representing a mentally ill person or a respondent as defined herein shall have ready access to view and copy all mental health and developmental disability records pertaining to his client, unless the client objects. If the patient or respondent later retains a private attorney to represent him, the mental health advocacy service shall destroy all copies of records pertaining to his case.

Any attorney representing a mentally ill person or a respondent as defined herein shall have the opportunity to consult with his client whenever necessary in the performance of his duties. A treatment facility shall provide adequate space and privacy for the purpose of attorney-client consultation.

E. Nothing in this Title shall be construed to prohibit a mentally disabled person or respondent to be represented by privately retained counsel. If a service attorney has been appointed by the court and the mentally disabled person or respondent secures his own counsel, the court shall discharge the service attorney.

F. Any respondent or mentally disabled person shall have the right to demand that the records in the possession of his attorney regarding his mental condition be destroyed or returned to the treatment facility, and he shall have the right to assurance by the director that such records have been so destroyed by the mental health advocacy service attorney.

G. The mental health advocacy service shall establish official rules and regulations for evaluating a client's financial resources, for the purpose of determining whether a client has the ability to pay for services received.

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A client found to have sufficient financial resources shall be required to pay the service in accordance with standards established by the director. An indigent client shall be provided legal counsel and representation without charge.

Added by Acts 1977, No. 714, § 1. Amended by Acts 1978, No. 782, § 1, eff. July 17, 1978; Acts 1982, No. 496, § 1, eff. July 22, 1982.

#### Historical and Statutory Notes

The 1978 amendment added "The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(y)" to the first paragraph of subsec. A.

The 1982 amendment designated pars. (1) to (3) of subsec. A; and, in par. (A)(1), substituted "36:4(B)(1)(v)" for "36:4(B)(1)(y)".

#### Cross References

Child Advocacy Program within Mental Health Advocacy Service, see Ch.C. art. 557 et seq.  
Termination of parental rights, see Ch.C. art. 1015.

#### Law Review and Journal Commentaries

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tul.L.Rev. 542 (1978).

#### Library References

Administrative Law and Procedure ⇨381.  
Mental Health ⇨20.  
States ⇨46, 74, 94.  
Westlaw Topic Nos. 15A, 257A, 360.

C.J.S. Mental Health §§ 13 to 16.  
C.J.S. Public Administrative Law and Procedure §§ 161, 165 to 170, 177.  
C.J.S. States §§ 88, 158 to 161, 163 to 165, 195, 229, 249 to 250, 252.

#### Notes of Decisions

##### Involuntary commitment 1

##### 1. Involuntary commitment

The trial court committed reversible error by failing to appoint attorney from the Mental Health Advocacy Service to represent son, in proceeding initiated by father to have son invol-

untarily committed for mental illness, even though son was represented by appointed counsel; law of judicial commitment is special and unfamiliar to many practitioners, and necessity of special representation is underscored by expeditious nature of commitment proceedings. In re C.P.K., App. 2 Cir.1987, 516 So.2d 1323. Mental Health ⇨ 40.3(2); Mental Health ⇨ 45

### § 65. Repealed by Acts 1993, No. 891, § 2, eff. June 23, 1993

#### Historical and Statutory Notes

The repealed section, added by Acts 1992, No. 798, § 1, eff. July 7, 1992, related to medication or treatment ordered in emergency situations. See, now, R.S. 28:53.

## PART III-A. ASSISTIVE OUTPATIENT TREATMENT

### § 66. Criteria for civil involuntary outpatient treatment

A. A patient may be ordered to obtain civil involuntary outpatient treatment if the court finds that all of the following conditions apply:

- (1) The patient is eighteen years of age or older.