

Opinion No. 88-75

December 2, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott D. Spencer, Assistant Attorney General

TO: The Honorable Art Encinias, District Judge, Division V, First Judicial District, P.O. Box 2268, Santa Fe, NM 87504-2268

QUESTIONS

May the district court clerk, without the consent of the person affected, release information to an abstracter concerning a person committed by the court to a mental health or developmental disability facility pursuant to the Mental Health and Developmental Disabilities Code?

CONCLUSIONS

No.

ANALYSIS

Section 43-1-19 of the Mental Health and Developmental Disabilities Code ("Code"), Sections 43-1-1 through 43-1-25 NMSA 1978 (1984 Repl.), governs disclosure of information about commitments. Subsection 43-1-19(A) states:

Except as otherwise provided in this code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize such client as the described person, or any code number or other means which can be used to match the client with confidential information regarding him.

Therefore, unless the Code provides an exception to the prohibition found in Section 43-1-19(A) a court clerk may not disclose such information.

Section 43-1-19(B) allows release of information in only four circumstances: (1) to mental health professionals involved in caring for the client; (2) to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on himself or another; (3) to the parent or guardian of a minor, when such disclosure is necessary for the treatment of the minor; and (4) to an insurer who is contractually obligated to pay for the treatment of the client. None of these exceptions allows a court clerk to release any information to an abstracter.

Subsection 43-1-19(H) states, in part: "Nothing in this section shall prohibit a clerk of a district court from providing to any person authorized under Sections 47-4-1 through 47-4-8 NMSA 1978 to conduct abstracter's business within New Mexico, information concerning the appointment of a guardian or conservator pursuant to Sections 45-5-201 through 45-5-432 NMSA 1978...." We do not read Section 43-1-19(H) as an exception to subsection 43-1-19(A)'s general rule of non-disclosure. Rather, Subsection 43-1-19(H) clarifies that the Code treats commitments differently than testamentary appointments or court appointments of guardians and conservators under Sections 45-5-201 through 45-5-432 of the Probate Code, sections 45-1-101 to 45-7-401 NMSA 1978. The Probate Code authorizes disclosure of certain information about these appointments, and Subsection 43-1-19(H) merely reaffirms that principle. In our opinion, Subsection 43-1-19(H) has no bearing on information arising under the Code.

Sections 14-2-1 to 14-2-3 NMSA (1978), likewise have no effect on the non-disclosure provision of Section 43-1-19(A). Subsection 14-2-1(E) provides that citizens have the right to inspect any public records except "as otherwise provided by law." Section 43-1-19(A) "otherwise provides" that court clerks shall not disclose certain records arising from proceedings under the Code.

We will not erode the protections that Subsection 43-1-19(A) affords. We presume that strong public policy considerations, including encouraging those in need of mental health services to seek them without fear of being stigmatized, prompted the Legislature to provide strict client confidentiality protections in matters arising under the Code. See Ellis & Carter, "Treating Children Under the New Mexico Health and Developmental Disabilities Code," 10 N.M. L. Rev. 279, 306-07 (1980). Anything but a straightforward reading of the plain language of Subsection 43-1-19(A) would compromise those policy considerations.

For these reasons we conclude that a district court clerk may not release the information identified in Section 43-1-19(A) without obtaining the consent of the person to whom that information pertains.

ATTORNEY GENERAL

HAL STRATTON Attorney General