

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



BRIAN SCHWEITZER
GOVERNOR

ROBERT E. WYNIA, M.D.
DIRECTOR

STATE OF MONTANA

www.dphhs.mt.gov

January 31, 2005

James B. Gottstein
Law Project for Psychiatric Rights
406 G St.
Anchorage AK 99501

RECEIVED
FEB 03 2005
Law Project For
Psychiatric Rights

Re: Montana State Hospital

Dear Mr. Gottstein:

I am writing you in my capacity as counsel for the Montana State Hospital (MSH), and for its staff. I understand you have been in continuing contact by E-mail and telephone with MSH Superintendent Ed Amberg and with several members of the MSH treatment staff as an advocate for one or more MSH patients. Some of your communications relate to requests for records at the direction of a patient, and are perfectly appropriate. Others, however, include direct advocacy challenging court commitment and court-ordered treatment on behalf of court-committed patients. This constitutes the practice of law in Montana as it is defined in § 37-61-201, MCA, is prohibited as contempt of the commitment court under § 37-61-210, MCA, and is also a violation of the attorney's license fee law, which can be penalized as a misdemeanor under 37-61-214, MCA.

I have instructed my clients that since by your own admission you are not an attorney admitted to practice in Montana, you are not authorized to negotiate on behalf of a patient in any matters related to the commitment process, or treatment under commitment. In addition, since you are an attorney admitted in Alaska, you must be aware that the Alaska Rules of Professional Conduct, like the Montana Rules, prohibits you from participating in such practice in Montana. It also clearly prohibits me from collaborating with you in such practice. The full text of Rule 5.5 in both jurisdictions is as follows:

Rule 5.5. Unauthorized Practice of Law.

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

If you seek to advocate for committed patients at the Montana State Hospital, you must first obtain *pro hac vice* admission status in Montana. Otherwise, I cannot communicate with you and I have instructed my clients to do the same.

If you do obtain *pro hac vice* status, I must also remind you that the Montana Rules of Professional Conduct, like the Alaska rules, prohibit direct negotiations with parties known to be represented by counsel. The Rule provide as follows:

Rule 4.2. Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a party or person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Mr. Amberg has repeatedly informed you of my representation and provided you with my name, address and telephone number. Nevertheless, you have refused to honor this request and have continued to attempt to negotiate and advocate on behalf of hospital patients directly with Mr. Amberg and other MSH staff members in violation of Rule 4.2.

While in my opinion no further notice should be necessary, this letter should stand as your definitive notice that I represent all staff members of the Montana State Hospital, and indeed all employees of the Montana Department of Public Health and Human Services including Joyce DeCunzo and the staff of the Addictive and Mental Disorders Division, with respect to all issues involving the care of all civilly or criminally committed patients at the hospital. This includes negotiations related to treatment plans, medication, patient grievances and complaints, discharge plans, and all other issues or concerns that arise in the course of patient care at MSH.

I therefore direct you to immediately cease any and all contact with MSH staff other than to obtain records to which you are entitled by patient authorization.

Sincerely,

A handwritten signature in cursive script that reads "Paulette Kohman". The signature is written in black ink and is positioned below the word "Sincerely,".

Paulette Kohman
(406) 444-1258

cc: Ed Amberg
Joyce DeCunzo