

OPINION NO. 70-122

Syllabus:

1. A physician must report, pursuant to Section 2917.44, Revised Code, a wound caused by a deadly weapon even if the wound was the result of an attempted suicide.

2. A physician need not report, pursuant to Section 2917.44, Revised Code, an injury caused by the ingestion of barbiturates or drugs taken in an attempted suicide. However see also Section 313.12, Revised Code.

3. The report, when filed with the proper law enforcement agency, pursuant to Section 2917.44, Revised Code, may be maintained as a confidential document of that agency.

To: Harry A. Sargeant, Jr., Sandusky County Pros. Atty., Fremont, Ohio
By: Paul W. Brown, Attorney General, September 10, 1970

I have before me your request for my opinion regarding the following questions:

(1) Does Section 2917.44, Revised Code, require a physician to report to the proper law-enforcement officer the treatment or request for treatment of a wound inflicted by gunshot or any deadly weapon in an attempted suicide?

(2) Does Section 2917.44, Revised Code, require a physician to report to the proper law enforcement officer the treatment or request for treatment of an injury caused by the ingestion of barbiturates or drugs in an attempted suicide?

(3) If such report must be made by the physician, may the report be maintained as a confidential report of the proper law enforcement officer having jurisdiction?

Section 2917.44, supra, entitled "Reporting of Gunshot Wounds", provides:

"Whoever is involved in any manner in a circumstance in which a person sustains a gunshot wound, or any wound which has been inflicted by a deadly weapon of any kind, shall, as soon as possible, notify the sheriff of the county or, if within a municipality, the police department of such municipality, or the state highway patrol within areas of its jurisdiction; provided that nothing contained in this section shall be construed as requiring an attorney, a clergyman or priest, a husband or wife,

or a physician to make a report to a sheriff or police department of any matters which, if reported, would constitute a violation of a confidential relationship existing between the attorney and his client, or between the clergyman or priest and his communicant or penitent, or between husband and wife, or between the physician and his patient, except that any physician who treats, or is called upon to treat, any such wound shall make a report setting forth a description of the wounded person, his name and address, if known, and a description of the nature and location of such wound.

"No person who makes a report in good faith with a view of complying with the requirements of this section shall, by reason thereof, have violated any confidential relationship, or be held to answer for the betrayal of a professional secret, or be held liable in damages to any person.

"Any such report to the sheriff or the police department may be made in person, by telephone, or in writing.

"Whoever violates this section shall be fined not more than one thousand dollars or imprisoned not more than six months, or both."

Under present Ohio law, communications solely between a physician and a patient are privileged. Section 2317.02, Revised Code. However, such physician-patient privilege is subject to the exception of Section 2917.44, *supra*, which requires the physician to report to the proper law enforcement officer gunshot wounds or wounds inflicted by other deadly weapons. State v. Antill, 176 Ohio St. 61 (1964).

"* * * The purpose of this privilege is to encourage patients to make a full disclosure of their symptoms and condition to their physicians without fear that such matters will later become public. Against the interest of the patient in having his condition remain confidential, must be balanced the interest of the public in detecting crimes in order to protect society."

Attempted suicide is not a crime in Ohio. By the terms of Section 2917.44, *supra*, the authority to determine whether the wound inflicted by the dangerous weapon was the result of an attempted suicide or the result of a criminal act, is placed in the proper public officials and not in the attending physician, thereby paralleling the intent to Section 313.12, Revised Code, as to actual death by alleged suicide. Irrespective of the surrounding circumstances, the statute requires a reporting by the physician wherever he is confronted professionally with such a wound.

A dangerous weapon is generally defined as an "in-

strumentality" likely to produce death or great bodily injury when used. State v. Bloom, 136 P. 951: 91 Kan. 156 (1913). Whereas barbituates, drugs and the like can also produce death or great bodily harm, they are all in some way animal, vegetable or mineral rather than instrumentalities, Section 3719.01 et seq, Revised Code. Penal statutes are to be strictly construed against the State. State v. Cincinnati Fertilizer Co. 24 Ohio St. 611 (1874); State v. Conley 147 Ohio St. 351 (1947); Harrison v. State 112 Ohio St. 429 (1925). Affirmed 270 U. S. 632 (1925). Consequently, wounds produced by things other than deadly instrumentalities and weapons are not within the terms of the statute.

The report, when filed pursuant to Section 2917.44, supra, may be retained as a confidential record of the law enforcement agency, subject only to the authority of the state, county or city records commission having final jurisdiction over the record. Section 149.31 et seq., Revised Code.

It is therefore my opinion and you are advised:

1. A physician must report, pursuant to Section 2917.44, Revised Code, a wound caused by a deadly weapon even if the wound was the result of an attempted suicide.
2. A physician need not report, pursuant to Section 2917.44, Revised Code, an injury caused by the ingestion of barbiturates or drugs taken in an attempted suicide. However see also Section 313.12, Revised Code.
3. The report, when filed with the proper law enforcement agency, pursuant to Section 2917.44, Revised Code, may be maintained as a confidential document of that agency.