# STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calendar years

1951 - 1954

Ordinarily, the liability of a doctor is predicated on his failure to exercise reasonable skill and care in performing his services. However, a physician may be answerable under some circumstances where he is free from personal negligence, as where he cares for a person beyond the scope of the consent capable of being given.

It has been held that the withdrawing of blood for transfusion purposes is such an act as requires consent. While we can find no law with respect to the rights of a doctor to take a blood test on a minor, it is our opinion that you should take the precaution of obtaining the father's consent before doing such a test.

JAMES GLYNN FROST
Deputy Attorney General

October 5, 1954

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Gerald T. Strout, Central Maine Sanatorium

The facts appear to be as follows: One Strout was admitted to CMS on September 10, 1953. After that date, a determination was made by your department that those legally liable for his support were unable to pay. On February 11, 1954, the department wrote to the Town of Milo relative to legal settlement. The Town accepted the charge from February 11, 1954 to date of discharge, but refused to accept the charge from the date of admission to the date of notice of request to assume liability under the provisions of Section 167 of Chapter 23 of the Revised Statutes of 1944.

The question presented deals with the right of the State to charge back to the municipality the cost from the date of admission to the date of notice, the liability from the date of notice having been accepted.

It is the opinion of this office that the date of notice to the municipality under Section 167 of Chapter 23, R. S. 1944, fixes the date of liability upon the municipality.

The statute referred to fixes the duty on your department to ascertain the ability of those legally liable to pay support for patients. It then provides that if inability is shown, then liability upon the municipality may be fixed at $2. per week. The statute appears to us to set forth this mode of procedure as a condition precedent to attaching secondary liability.

We would suggest, however, that immediate notice on admission, to municipality, may be in order. The municipality would then perhaps furnish the department with information relative to the capacity of those legally liable to pay. Ability to pay is always a question of fact which must be ascertained as a given time with reference to an existing situation. The giving of immediate notice will also do away with any period of time between admission and the ultimate determination of inability to pay.

ROGER A. PUTNAM
Assistant Attorney General