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March 29, 1963

John O. Patterson, M.D., Superintendent — Augusta State Hospital

Courtland D. Perry, Asst. Attorney General — Mental Health and Corrections

Disclosure of Hospital Records

On March 14, 1963, you requested the opinion of this office relative to the right of a former patient's attorney to access to hospital records. You further requested our opinion as to the nature of the records required to be disclosed pursuant to a subpoena issued by the Court.

Prior to the enactment of the disclosure of records, provisions of the laws relating to the Department of Mental Health and Corrections to wit: The last sentence of the first paragraph of Section 1, Chapter 27 of the R.S., enacted by Chapter 242 of the P.L., of 1959 and Section 191 of Chapter 27 of the R.S., enacted by Chapter 303 of the P.L., of 1961, an attorney for a patient, or former patient, had the right to examine certain hospital records relating to his client, for example, the record of admittance, release or discharge.

Under the above cited statutes, an attorney for a patient, or former patient, may be denied access to all hospital records relating to his client.

The above mentioned and similar records required by law to be kept, or kept in the discharge of a duty imposed by law; in this instance, the duty being the lawful hospitalization of the mentally ill, may be subpoenaed by the Court.

It is our opinion, however, that such only, are the records which are required by the statutes to be disclosed pursuant to subpoena, and that written notes and comments of social workers, nurses, physicians, etc. made as matters

of information forming the case history and used in the conduct of treatment are not required to be disclosed.

/s/ COURTLAND D. PERRY
Courtland D. Perry
Assistant Attorney General

CDP/f

cc: Attorney General's Office

cc: Dr. Harold A. Pooler, Supt.,
Bangor State Hospital

REFERENCE: Attorney General's Office--Opinion dated February 9, 1944
Title: Right of Attorney to access to Institutional Record.

Attorney General's Office--Opinion dated July 31, 1951
Title: State Hospital Records

February 9, 1944

Harrison G. Greenleaf, Commissioner of Institutional Service

In your memorandum of February 8, 1944, you ask to be advised with regard to the following question:

> Will you please define for me the rights of any attorney to examine records of the State Prison, or of any of the state institutions, and specifically, whether or not an attorney has any right to have access to the records?

The statute imposes upon the warden of the State Prison, for example, the duty of keeping a record of the conduct of each convict; and for every month during which it appears that the prisoner has faithfully observed the rules of the prison the warden may, with the approval of the Commissioner, make certain deductions from the sentence. Chapter 152, Section 20, as amended by the Laws of 1933 and the Laws of 1943.) Then again, by Chapter 147, Section 38, the warden is required to keep in the prison a book containing a full and accurate record of each and every transaction had under the provisions of the chapter relating to paroles. Under Section 37 of the same chapter, prisoners on parole are required to furnish the warden on the last day of each month a written report showing the conduct of the parolee during the current month, his employment, and other information which the warden is required to tabulate and make report thereof to the Parole Board. This information also is used by the Parole Board in an annual report which the Board is required to make to the Governor. Included are violations by paroled prisoners. I have not attempted to refer to all records required to be kept by the warden. I have merely referred to these for the purpose of making clear the views which I shall express.

These are all public records. A public record has been defined as one "required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law * * * made by a public officer authorized to perform that function * * *."

Every public record, however, is not subject to inspection by all citizens, unless expressly made so by statute. In this State we have no statute which confers upon the general public the right to inspect prison or other institutional records, nor have custom and usage, so far as I can learn, established the right. The right, therefore, to inspect the records at these institutions is to be determined by the common law.

"At common law a person may inspect public records in which he has an interest or make copies or memoranda thereof when a necessity for such inspection is shown and the purpose does not seem to be improper, and where the disclosure would not be detrimental to the public interest; but the gratification of mere curiosity or motives merely speculative or the creation of scandal will not entitle a person to inspection or to make copies or memoranda." 53 C.J. page 624, Section 40.

I would thus advise you that the records of the State Prison or any institution of which you are the departmental head are not subject to inspection by the public generally or by an attorney who represents no one having an interest in the particular record that he wants to examine. An attorney representing a prisoner as his agent would be entitled to inspect, for example, the book, card, or however the record may be kept, of the prisoner's monthly behavior and the allowance monthly for "good time," so that he may know how much time has been served and how much more time he will have to go in order to be entitled to parole or to his ultimate discharge. On the other hand, no attorney would be entitled to examine and inspect the envelope in which are kept certain memoranda relating to the prisoner which I saw in the possession of the warden on various occasions when I attended court which dealt with the history of the prisoner.

In other words, no attorney has the right to make a general inspection of the memoranda kept by the warden except those which the Statute specifically requires him to keep as a record such as those relating to the time the particular prisoner is to serve; his conduct and behavior; the time that he would be eligible for parole or discharge; and also any record which deals with his application for parole and the decision of the Parole Board thereon. In these records he would have an interest as it is defined by the common law. In other records, he would not have.

ABRAHAM BREITBARD
Deputy Attorney-General

N.B. See previous opinions of this department as to the right of the general public to examine the records of:

a. State Treasurer

b. State Auditor

c. Inheritance Tax Commissioner

FRANK L. COWAN
Attorney-General

July 31, 1951

To Norman U. Greenlaw, Commissioner of Institutional Service

Re: State Hospital Records

In your memo of July 20, 1951, you ask if Dr. Sleeper, Superintendent of the Augusta State Hospital, was within his authority in refusing an attorney permission to examine the case history and report made by the hospital on an inmate of the Maine State Prison, a client of the attorney.

Relative to this question, you are advised that certain records required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, made by a public officer authorized to perform that function, are public records. The fact that records are public does not, however, subject such records to the inspection of all persons.

While you are required by statute to keep public records at the State Prison and perhaps at certain other institutions with regard to matter relative to parole, we find no such requirement in connection with State Hospitals.

Therefore, a rule of thumb which this office believes can be safely followed with regard to attorneys who may inspect such hospital records, is: An attorney should be granted permission to inspect any record which is open to the inspection of that attorney's client. If the request of a person to see records may be refused, then that person's attorney has no stronger right to inspect such records.

This answer would place upon the individual in charge of such records the discretion of ascertaining whether or not the records are such as are not open to the inspection of interested persons.

This office is of the opinion, therefore, that the Superintendent was within his authority in refusing an attorney permission to inspect records which in Dr. Sleeper's opinion were confidential.

With respect to this matter, and perhaps other information of interest to you, we refer you to an opinion written to your office by Abraham Brietbard, Deputy Attorney General, February 9, 1944.

JAMES G. FROST
Assistant Attorney General