

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 4, 1967

yes

To John C. Patterson, M.D., Superintendent Dept. Augusta State Hospital
From Courtland D. Perry, Assistant Atty. Gen'l. Dept. Mental Health and Corrections
Subject Discharge of Patient from Augusta State Hospital - Case No. 34833

FACTS:

Patient, Case No. 34833, was admitted to the Augusta State Hospital on April 17, 1967, under an emergency procedure. On April 21, 1967 the patient escaped from the hospital and on April 23, 1967 arrived at the home of her brother at North Windham, Maine. Upon her arrival her brother telephoned the Augusta State Hospital and advised her State hospital physician that she appeared to be suffering from exposure. Her brother was advised by the hospital physician to have her immediately attended by a local physician. A local osteopathic physician was called in and following examination of this patient he called the superintendent of the Augusta State Hospital advising him that the patient was suffering from a severe circulatory condition in the lower extremities, and that such physical condition demanded immediate attention, and that travel to the Augusta State Hospital from North Windham was not desirable at that time. The physical condition of this patient in the opinion of the local osteopathic physician was deemed at that particular time to require priority attention prior to rehospitalization for her psychiatric condition. The superintendent of the Augusta State Hospital accepting the report of the local osteopathic physician and responding to his recommendation discharged this patient from the Augusta State Hospital, although, in the superintendent's words, "she was considered to be seriously mentally ill." At the time of this purported discharge from the Augusta State Hospital the patient was admitted to the Portland Osteopathic hospital for treatment of the above physical condition.

On April 25, 1967 treatment of the physical condition having been administered at the Portland Osteopathic Hospital the patient was considered ready for return to the Augusta State Hospital. Upon advice from the Attorney General's Office the discharge was nullified and the patient was returned to the Augusta State Hospital without involvement of a recommitment procedure.

QUESTION:

Do the facts as above set forth form the proper basis for the discharge of a patient from the Augusta State Hospital under Title 34, M.R.S.A., 1964, §2374?

ANSWER:

No.

OPINION:

Title 34, M.R.S.A., 1964, §2374 provides:

"The head of a hospital shall as frequently as practicable, but not less often than every 12 months, examine or cause to be examined every patient and whenever he determines that the conditions justifying hospitalization no longer obtain, discharge the patient-and make a report thereof to the department."

STAFF HOUSE
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STAFF HOUSE AUGUSTA

It is our opinion that the language of §2374 makes an examination of a patient a mandatory prerequisite to discharge from a State mental hospital; thus, precluding the discharge of an escapee without examination. The word "and" following the words "examine or cause to be examined every patient" and preceding the words "whenever he determines that the conditions justifying hospitalization no longer obtain," conjoins "examination" and "determines," and makes discharge dependent upon the results of the examination.

We now turn to a consideration of the requisite basis upon which a determination that conditions justifying hospitalization no longer obtain might be made, and discharge ordered

Pivotal, here, is the construction to be given to the phrase "conditions justifying hospitalization." It is essential that we look at the chapter in which this phrase appears in order to discover the purpose of the legislation.

With respect to a patient admitted to a State hospital under the emergency procedure, Title 34, M.R.S.A., 1964, §2333 (the procedure under which the patient in question was admitted) the following are conditions precedent to admission:

"2. Certification. A certification by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his illness, is likely to injure himself or others if not immediately restrained....."

Within 4 days from the escape of the patient in question a staff physician of the Augusta State Hospital satisfied the following conditions permitting retention of this patient - - certification that in his opinion the patient was mentally ill and was likely to injure herself or others if allowed to remain at liberty (Ref. Title 34, M R.S.A., 1964, §2372) such certification is required to be made within 3 days from the date of admission or the patient is entitled to discharge. As is stated above this patient escaped 4 days from the date of admission. The foregoing examples are set forth as illustrative of the criteria or conditions necessary to permit emergency hospitalization under the chapter within which section 2374 appears.

The most liberal admission provision contained in Title 34, M.R.S.A., 1964, §2290 permitting informal admission also has as its basis for hospitalization - - mental illness.

In Title 34, M.R.S.A., 1964, §2251 "hospital" is defined:

"3. Hospital. "Hospital" means a public or private hospital or institution, or part thereof, equipped to provide in-patient care and treatment for the mentally ill,"

Title 34, chapter 191 in its entirety relates to hospitalization of the mentally ill and its manifest purpose is to provide therefor, in an all inclusive manner, and in our opinion it must therefore be said that by necessary implication "conditions justifying hospitalization" means conditions directly and exclusively related to the mental health of a patient, justifying hospitalization.

The superintendent of the Augusta State Hospital on April 25, 1967 referring to

the condition of the patient in question as of the time of escape said "she was considered to be seriously mentally ill."

The examination of the patient in question made by the osteopathic physician at North Windham, determined only that this patient had developed a physical condition requiring immediate attention, a condition which for the moment took priority over the patient's mental condition; however, the mental condition of this patient was as far as can be determined -- unimproved, and she was still seriously mentally ill, for which mental illness she was in need of continuing hospitalization, and but for the intervening physical condition would have remained hospitalized at the Augusta State Hospital. We are, therefore, of the opinion that the results of the examination of this patient, made at North Windham, provide no basis as contemplated by the Legislature for a determination that with respect to this patient conditions justifying hospitalization no longer obtained; and her discharge pursuant thereto was improper.

We see nothing inconsistent in retaining this patient on the rolls of the Augusta State Hospital during the period she was hospitalized for the physical condition at the Portland Osteopathic Hospital. No responsibility falls on the superintendent of the Augusta State Hospital for misfeasance, malfeasance or nonfeasance occurring with respect to this patient while hospitalized at the Portland Osteopathic Hospital, said hospital and attending physicians and servants acting with respect to this patient independently, and not as the agent or agents of the Augusta State Hospital, or its superintendent.


Courtland D. Perry
Assistant Attorney General