

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 10, 1967

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 Against Medical Advice

FACTS:

The attached Form 79 has been used from time to time at the Augusta State Hospital in instances wherein the relative of a patient has requested and insisted upon the patient's release. The use of this Form has been coincidental with the discharge of the patient whose mental condition in the opinion of the superintendent has been such that discharge would have been unsafe for the patient or for others.

QUESTION:

Has the Superintendent of a State Hospital authority to discharge a patient when the medical condition of the patient is such that in the opinion of the Superintendent discharge would be unsafe for the patient or for others?

ANSWER:

No

OPINION:

The discharge of a patient from State Mental Hospitals is governed by statute, pertinent portions of which are as follows:

As to voluntary patients, Title 34, M.R.S.A., 1964, §2292

"The head of the hospital shall discharge any voluntary patient who has recovered or whose hospitalization he determines to be no longer advisable. He may discharge any voluntary patient if to do so would, in the judgment of the head of the hospital, contribute to the most effective use of the hospital in the care and treatment of the mentally ill."

As to involuntary patients, Title 34, M.R.S.A., 1964, §2374

"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."

Release on convalescent status is also governed by statute which reads in pertinent part as follows, Title 34, §2375:

"The head of a hospital may release an improved patient on convalescent status when he believes that such release is in the best interests of the patient. Release on convalescent status may include provisions for continuing responsibility to and by the hospital, including a plan of treatment on an out-patient or non-hospital patient basis."

Throughout the language of the foregoing sections is found reference to discharge and release based upon the condition of the patient and his readiness for release.

The only seeming departure from this criteria is found in §2292 under which a patient may be discharged if such discharge would contribute to the most effective use of the hospital in the care and treatment of the mentally ill, but this too, is limited by the language of Title 34, M.R.S.A., 1964, §2293, and it is our opinion that §2293 as to voluntary patients and Title 34, §2376 as to involuntary patients by necessary implication impose a duty upon the superintendent of the state hospital to permit only the release or discharge of a patient, the release or discharge of whom, in the opinion of the superintendent would not be unsafe for him or for others. Thus, a superintendent requested to release a patient with respect to whom release or discharge would be unsafe has no choice but to certify his opinion of the condition of the patient to the Probate Court taking the first step in the initiation of a judicial proceeding to determine the mental condition of the patient.

Title 34, §2376 reads in pertinent part as follows:

"Any patient hospitalized under section 2332 or 2333 who requests to be released or whose release is requested in writing by his legal guardian, spouse or adult next of kin shall be released within 10 days after receipt of the request except that, upon application to the probate court or a judge thereof, whether in session or in vacation, supported by a certification by the head of the hospital that in his opinion such release would be unsafe for the patient or for others, release may be postponed for such period not to exceed 10 days as the court or a judge thereof may determine to be necessary for the commencement of proceedings for a judicial determination pursuant to section 2334.

Title 34, §2293 reads in pertinent part -- the same

The Court in Austin W. Jones Company vs. The State of Maine, 122 Me, 214 at 225 (1923) addresses itself to the question of the State Hospital Superintendent's responsibility with respect to release under a former provision, in language as follows:

".....While the statute law provides that the superintendent of an insane hospital may permit any inmate thereof to leave such institution temporarily in charge of his guardian, relative, or friend, or even by himself, for a period not exceeding six months,

yet reason and good sense demand that such permission should not be given if the safety and welfare of the patient, or the community at large, are to be jeopardized by such permission. And it equally follows that the degree of care to be exercised in giving such permission should be commensurate with the particular nature of the patient's mental affliction and the possible or proportionate risk consequent upon his enlargement"

We consider this language to be applicable still, and provides a standard by which the superintendent of the state hospital is bound in the exercise of his judgment as to the readiness of a patient for release or discharge.

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It is our opinion that the superintendent of a state hospital is without authority to release or discharge a patient when such discharge in the opinion of the superintendent would be unsafe for the patient or others. Form 79 attached hereto, and referred to in the facts, provides no insulation to superintendents against liability for damage caused to the patient, or to others by reason of the discharged patient's mental condition.

"Release" as used in §§2293, 2376 and "discharge" as used in §§2292, 2374 carry the same import, i.e., absolute separation from a mental hospital, and as used in this opinion are considered to carry the same meaning when used together or separately.

Release on convalescent status referred to in §2375 is the only statutory procedure for separation from a mental hospital without transfer short of absolute discharge, and this procedure is available only to the superintendent when a patient is improved and it is in his best interest to be released on convalescent status.



Courtland D. Perry
Assistant Attorney General

I, the undersigned, am today removing _____
(patient's name)
from the Augusta State Hospital against the advice of the Superin-
tendent. My relationship to this patient is that of _____
It has been fully explained to me that I am completely responsible
for any injury or damage to her/his own or other person or property
that may accrue from any act committed by her/him. I hereby entire-
ly relieve the Augusta State Hospital, the Superintendent, and any
member of his staff and this Institution of any and all responsibil-
ity in relation to this person and her/his acts following her/his
removal by me from said Augusta State Hospital.

Date _____ Signed _____
Date _____ Witness _____