STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

a bill is dependent upon the date of "recess" rather than "passage" the holding of the above case would not change the result expressed herein.

It makes no difference when a bill is signed by the Governor if in fact it is signed within the proper period. It becomes effective ninety days after recess of the Legislature which passes it. Time of signature is of no essence since the Governor may sign within five days or not sign it at all and the act will still become law and be effective ninety days after recess. The crucial date is date of recess.

THEREFORE,

1. An Act signed by the Governor within five days after presentment to him during a legislative session becomes effective ninety days after the recess of that legislative session.

2. An Act not signed by the Governor, while the Legislature is in session, and not returned by him within five days, becomes effective ninety days after recess of the legislative session.

3. An Act not signed by the Governor while the Legislature is in session but returned by him within the five-day period and passed by the Legislature over his objections, becomes effective ninety days after the recess of that legislative session.

4. An Act not signed by the Governor when a session of the Legislature terminates by recess before the expiration of five days and the Governor fails to return it with his objections within three days after their next meeting becomes effective ninety days after the recess of the legislative session which passed it.

5. An Act signed by the Governor within three days after the Legislature reconvenes, within the ninety day period, when the session of the Legislature passing the Act terminated by adjournment, previous to the expiration of the five-day period, becomes effective ninety days after the date on which the Legislature passing it recessed.

6. To the same extent, an Act signed by the Governor, within three days after the Legislature reconvenes, beyond the ninety day period, when the session of the Legislature terminated by adjournment, previous to the expiration of the five-day period, becomes effective immediately, since the Governor's signature is essential to the Act's effectiveness.

7. Too, an Act not signed by the Governor and not returned to the Legislature within three days after the Legislature reconvenes, beyond the ninety-day period, when the session of the Legislature terminated by adjournment, previous to the expiration of the five-day period, becomes effective immediately upon the expiration of the period of time in which the Governor has to act.

If in the same circumstances, the Governor returns the Act within the three-day period, unsigned with his objections and the Legislature passes the Act over his objections, it becomes effective immediately upon final passage by the Legislature pursuant to Article IV, Part 3, section 2 of the Constitution of Maine.

JON R. DOYLE
Assistant Attorney General

November 13, 1967
Mental Health and Corrections

William E. Schumacher, M.D., Director

Mentally Ill Physicians; Me. Rev. Stat. Ann., Tit. 32, § 3152 (1964).

FACTS:

Me. Rev. Stat. Ann., Tit. 32, § 3152 (1964) provides in substance that a licensed physician must report to the Department of Mental Health and Corrections whenever he is treating another licensed physician for mental illness. Upon receipt of such report, the Department is directed to conduct an investigation to determine whether the illness seriously impairs the affected physician's ability to practice medicine. If so, provisions exist for suspension of the physician's license by the Board of Registration in Medicine.

You have brought to our attention a possible problem in the effective administration of this law, the problem being that a physician who wishes to seek psychiatric treatment for a minor neurosis, which he feels does not affect his ability to practice medicine, may not do so for fear that his license will be jeopardized. You have, therefore, requested this Office, in effect, to set a standard of severity of mental illness, below which a treating physician need not make the statutorily required report.

QUESTION:

How "mentally ill" must a physician be before the physician treating him must file the report with the Department of Mental Health and Corrections required by Me. Rev. Stat. Ann., Tit. 32, § 3152 (1964)?

OPINION:

A definition of the term "mentally ill," as used in the cited statute, is not within the capabilities or province of this Department. Such a definition can only be made by those possessing the requisite professional training and experience. Psychiatrists themselves concede that the concept of mental illness is ephemeral, and disagree among themselves as to its manifestations.

The Legislature's intent is to protect the public from physicians whose mental condition seriously interferes with their ability to render adequate medical treatment. To this end, it has required that *all* mental illnesses of physicians, of whatever type and severity, be reported to the Department, and it is to be noted that the burden has been placed by statute squarely on the Department of Mental Health and Corrections, which is staffed with trained psychiatric personnel, to make the determination whether the mental illness reported "seriously interferes with (the affected physician's) ability to practice medicine." It is only such certification by the Department to the Bureau of Registration in Medicine of "serious interference" which can furnish cause for license suspension.

In view of the mandatory language in the statute we do not consider it our function to define how "mentally ill" a physician must be before his attending physician must file a report. We would further point out the extensive procedures under the statute with which conformance must be had before a mentally ill physician's license can be suspended. These procedures, to us, appear to offer adequate safeguards to bar any fear on the part of a physician that his license will be suspended because of a minor neurosis not seriously affecting his professional abilities.

However, if the present language of the statute is considered by your profession as having the practical effect of discouraging doctors from seeking psychiatric help, it might be well to attempt the inclusion of clarifying amendments at the 1969 session of the Legislature. You, yourselves, in the Bureau of Mental Health will have to determine at what point "mentally ill" affects practice. Beware of easy definitions. Surely some major hysterics are more disabled than some mild psychotics. This Office cannot supply much help in this area except to point out that hard and fast rules often don't work.

ROBERT G. FULLER, JR.
Assistant Attorney General