

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date 26 October 1973

To William E. Schumacher, M.D., Director

Dept. Bureau of Mental Health

From William J. Kelleher, Ass't. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Informal Opinion re Title 34 M.R.S.A. §§2333, 2290

You have asked a question concerning the procedure which the head of a hospital must follow pursuant to Title 34, M.R.S.A. §2333, specifically, whether the head of the hospital must discharge a patient who is mentally ill and poses a likelihood of serious harm due to his illness and who was admitted pursuant to an emergency, involuntary admission, from that admission and admit him pursuant to §2290, an informal, voluntary admission, if that patient requests to be admitted pursuant to §2290. This informal opinion is in response to your question.

Section 2333 states in relevant part:

"If in the event the head of the hospital recommends further hospitalization of the individual, the head of the hospital must first allow the individual an opportunity to be admitted pursuant to section 2290. If the individual declines to be admitted pursuant to section 2290, the head of the hospital may make application with the District Court Judge within whose jurisdiction the hospital is located within 72 hours after admission..."

As this language reveals, section 2290 must be considered since the admission in question is pursuant to that section. Section 2290, as enacted by P.L. 1965, c. 10, provides for voluntary, informal admissions and states in relevant part:

"Any person....desiring admission to a hospital for the mentally ill...for care and treatment of a mental illness, may be admitted...as a patient without making formal application therefor...if, after examination, the head of the hospital deems such person suitable for such admission, care and treatment...Any such patient shall be free to leave such hospital at any time after admission." (Emphasis supplied.)

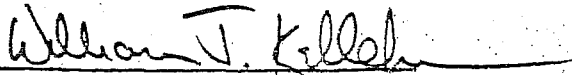
The situation facing the head of a hospital after an emergency admission is as follows: The patient has been examined and the head of the hospital recommends further hospitalization; pursuant to the requirements of §2333, the head of the hospital must give the patient an opportunity to be admitted under an informal admission. If the patient desires this he may so request. If he declines, the head of the hospital may make application with the District Court for a hearing to determine whether continued involuntary hospitalization is appropriate. If the patient does request an informal admission, the provisions of §2290, read in pari materia with §2333, become operative. Taking into account the report of the examination required by §2290, the head of the hospital must determine whether he "deems such person suitable for such admission", i.e. an informal admission. He may appropriately consider the requirement of §2290, that, "Any such patient shall be free to leave such hospital at any time after admission", together with a consideration of the person's mental condition, i.e. does he "pose a threat of serious harm", as defined by §2251, sub-§7, paragraphs A and B, requiring continuous hospitalization which should not be terminated by the patient being able to "leave such hospital at any time", as could be the case under an informal admission.

William E. Schumacher, M.D., Director

26 October 1973

Page 2

The mandate of §2333 that the head of the hospital "must first allow the individual an opportunity to be admitted pursuant to §2290" merely sets forth the requirement that the head of the hospital must give consideration to the appropriateness of an informal admission if it is requested.



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Assistant Attorney General

WJK/vv