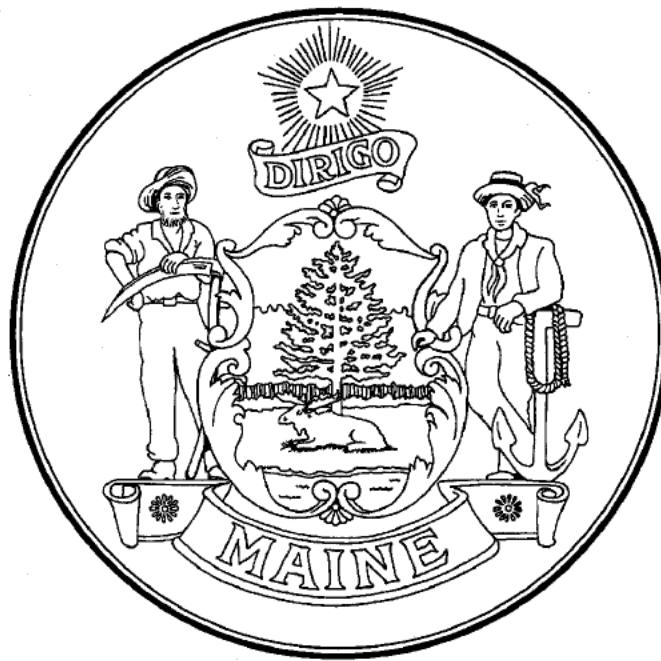


MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 7, 1975

To Roy A. Ellinger, Superintendent

Dept. Augusta Mental Health Institute

From Courtland D. Perry, Asst. Att'y General

Dept. Mental Health and Corrections

Subject _____

SYLLABUS:

A parent or guardian may not over-ride the request of an informally admitted minor patient for release from a mental health institute and thus secure the continued hospitalization of such minor patient. An unemancipated minor may be detained at a mental health institute following his requested release from hospitalization and pending his removal from the institute by a parent or guardian. Such detention is in the limited exercise of the state's parens patriae guardianship over minors and should be for only a reasonable time; i.e., a matter of hours.

FACTS:

Situations arise wherein an informally admitted minor patient requests release from a mental health institute and such release is opposed by the minor's parent or legal guardian, and situations arise wherein an informally admitted minor patient requests his release from a mental health institute and parents or a legal guardian can not immediately remove such minor patient from the institute.

QUESTION AND ANSWER NO. 1:

Can a parent or legal guardian over-ride the request of an informally admitted minor patient for release from a mental health institute and thus secure such minor patient's continued hospitalization against his wishes?

A parent or guardian can not over-ride the request for release of an informally admitted minor patient; however, involuntary admission procedures may be initiated by the parent or guardian.

QUESTION AND ANSWER NO. 2:

May mental health institute detain an informally admitted minor patient, following his request for release from hospitalization until removal from the institute can be effected by a parent or guardian?

An informally admitted minor patient may be detained for a reasonable period of time at the mental health institute pending removal by a parent or guardian following the minor patient's request for release (not applicable to a minor who is emancipated).

REASONS:

1. 34 M.R.S.A. § 2290, Informal admission, provides:

"Any person desiring admission to a hospital for the mentally ill for care and treatment of a mental illness, may be admitted, subject, except in case of medical emergency, to the availability of suitable accommodations,

as a patient without making formal application therefor, although standard hospital information may be elicited, if, after examination, the head of the hospital deems such person suitable for such admission, care and treatment. Any person under the age of 18 years must have the consent of his parent or guardian, and, in the case of an admission to a hospital for the mentally ill other than a private hospital, the consent of the Commissioner of Mental Health and Corrections or his designee. Any such patient shall be free to leave such hospital at any time after admission; this, however, shall not preclude the admission of any such person to a hospital under section 2333 or 2333-A when at any time such admission is considered necessary in the interest of the patient and of the community. The head of the hospital admitting the individual shall forthwith make a report thereof to the department. The head of the hospital shall cause every patient admitted pursuant to this section to be informed at the time of admission of his status as an informally admitted patient and of his freedom to leave the hospital at any time subject to this section."

The above quoted statute controls the minor patient's right to be released upon his own request notwithstanding objections of a parent or guardian. No distinction is made in this statute between minors and adults respecting the right to release. In appropriate cases where the language, "when at any time such admission is considered necessary in the interest of the patient and of the community," is applicable, the parent or guardian objecting to release could make application for involuntary admission of the minor pursuant to 34 M.R.S.A. § 2333 or § 2333-A.

The clear public policy of Maine with respect to the right of an informally admitted patient, minor or adult, to his release upon request is expressed in 34 M.R.S.A. § 2290; to the extent that such statute permits the minor to effect his own release from hospitalization, the statute has accorded minors a limited emancipation.

2. As to the emancipated minor hospitalized as an informally admitted patient, the mental health institute is without authority to detain the person once a request for release from hospitalization has been made, subject, of course, to the provision of 34 M.R.S.A. § 2290 relating to the initiation of involuntary hospitalization in appropriate cases.

The general rule applicable in determining whether a minor is an emancipated minor is stated as follows:

"Emancipation is a renunciation by a parent of the latter's legal duties whereby he surrenders all his parental rights to the child or others. In determining whether a child has been emancipated it is the intention of a parent who has control and/or custody of the child involved. Whether or not a parent emancipates his minor child, however, rests with the parent and not with the child.

"Emancipation is a product primarily of some act or omission of the parent, and cannot be accomplished by an act of the child alone."

LAW OF HOSPITAL, PHYSICIAN AND PATIENT, Jayt, Hayt and Groeschel, Chapter 25, § 3 at page 470 (3rd Edition, 1972)

As to the unemancipated minor, it is our opinion that, following request of an informally admitted minor patient for his release from hospitalization, the mental health institute, upon request of the parent or legal guardian, may detain such patient for a reasonable time (a matter of hours, only) to permit the parent or guardian to travel to the mental health institute for the purpose of removing the minor patient.

We base this latter opinion upon public policy considerations. The parent or guardian of an unemancipated minor has the legal control over such minor and has the right to exercise such control as to a minor patient upon release from a mental health institute.

We are of the view that the state through its instrumentality, the mental health institute, has an obligation to exercise a limited power of parens patriae guardianship between the time of receipt of the request of the minor patient for release and the arrival of the parent or legal guardian for the purpose of removal of the patient from the institute.

"Just as the natural parent may constitutionally place limitation on the child's freedom of locomotion and may substitute the will and judgment of the parent for that of the child and thus constrain the child's will for his own protection, so also may the State in the exercise of its parens patriae guardianship."

S**** S**** v. State, Me. 1973, 299 A. 2d 560 at 568.



Courtland D. Perry
Assistant Attorney General

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