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# STATE OF MAINE

Inter-Departmental Memorandum Date December 1, 1975

To Roy Ettlenger, Superintendent Dept. Augusta Mental Health Institute

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

Subject Confidentiality of Records Provisions of 34 M.R.S.A. §1-A as enacted by  
P.L. 1975, Chapter 495, § 2

## SYLLABUS:

In the rare case when disclosure is to a mental health facility not licensed under Title 34, § 2052-A and is not necessary to carry out any purpose of Title 34, Chapter 191, consent to disclosure is required.

It is not necessary to obtain the consent of the patient to disclosure, nor to provide an opportunity for his review of the information to be disclosed, prior to disclosure of patient records of the Augusta Mental Health Institute to a community mental health center licensed under section 2052-A of Title 34. Disclosure of information to a mental health facility not licensed under Title 34, § 2052-A, does not require prior consent and an opportunity to review when such disclosure is necessary to carrying out the provisions of Title 34, Chapter 191.

2. Disclosure of Augusta Mental Health Institute patient information to a community mental health center which will provide services incident to the convalescent status of such patient may be undertaken without prior consent of the patient and his opportunity to review the information; in such instance, the exception provision of subsection 2 of § 1-A of Title 34 applies.

3. A worker of the Department of Human Services or a community mental health center may receive information relative to an Augusta Mental Health Institute patient without the patient's prior consent or his opportunity to review such information when such worker's access to information is necessary to the carrying out of the hospitalization provisions of Title 34, Chapter 191; e.g., the involvement of the worker in preparation for release on convalescent status under Title 34, § 2375.

4. When disclosure is for purposes other than direct third party reimbursement, unless disclosure by the Augusta Mental Health Institute of patient information to a department of state government or to a department of the federal government is necessary in carrying out any statutory function of the Department of Mental Health and Corrections or any of the hospitalization provisions of chapter 191 of Title 34, prior consent of the patient to disclosure and an opportunity for his review of the information are required. All portions of the third from the last paragraph of § 1-A of Title 34 are applicable to persons receiving services at the state mental health institutes under Title 34, Chapter 191.

5, 6. It is not necessary to obtain prior consent to the release of information from the Augusta Mental Health Institute to the Augusta General Hospital in the event of the transfer of a patient thereto for medical treatment (emergency or otherwise) since the provision of medical treatment is mandated by § 2252 appearing within Chapter 191 of Title 34, such disclosure being within the exception of subsection 2 of § 1-A of Title 34, provided that the transferred patient is not discharged from the Augusta Mental Health Institute at the time of transfer.

7. A student participant in an educational program within the contemplation of the third from the last paragraph of § 1-A of Title 34 may have access to patient information without the patient's prior consent or opportunity to review provided that the identity of such patient remains undisclosed.

8. Under subsection 3 of § 1-A of Title 34, a court may subpoena a writing as described in § 1-A whether such writing originates at the Augusta Mental Health Institute or is received from an outside agency or individual, its use being subject to the privilege provisions of Title 32, determination in connection with privilege being a matter for the court.

9. Photostatic copies of hospital records are as admissible into evidence as are the original records (16 M.R.S.A. § 456). The custodian of records should have copies available for introduction into evidence or for substitution of originals. (Any problem of court retention of original records should be referred by the Augusta Mental Health Institute to the Office of the Attorney General for assistance.)

10. As to mentally incompetent patients of the Augusta Mental Health Institute proposed for discharge or release on convalescent status and placement in a private nursing home, disclosure of information may be undertaken within the exception provisions of subsection 2 of § 1-A of Title 34.

11. Acknowledgment to a law enforcement agency that a person held in custody by such law enforcement agency is a patient of the Augusta Mental Health Institute may be undertaken within the exception provision of subsection 2 of § 1-A of Title 34.

12. and 13. Reporting of information relative to an Augusta Mental Health Institute patient suffering from venereal disease or tuberculosis is controlled by 22 M.R.S.A. § 1094 and § 1041 respectively, and disclosure of information in such instances is not controlled by 34 M.R.S.A. § 1-A.

14. Disclosure of a report of an autopsy performed upon the body of a deceased Augusta Mental Health Institute patient is not controlled by 34 M.R.S.A. § 1-A, but is subject to the consent of the spouse or next of kin of the deceased person -- whoever possesses the quasi property interest in the body of such deceased person. No prior consent is required when the autopsy is performed pursuant to 22 M.R.S.A. § 2883.

FACTS:

This office has received a request for an opinion raising multiple questions with respect to the operative effect of the new confidentiality of records provisions of 34 M.R.S.A. § 1-A, as enacted by P.L. 1975, Chapter 495, § 2.

QUESTION 1:

Is consent for release of information and an opportunity for review by the patient necessary before any information can be supplied to the community mental health centers?

ANSWER:

No (qualified).

QUESTION 2:

Is consent for release of information and opportunity for review by the patient necessary when the patient is on convalescent status from the mental health institute and receiving services incident thereto from the community mental health center?

ANSWER:

No.

QUESTION 3:

Is the consent of the patient to release of information and opportunity for review by the patient required before information may be disclosed to employees of the mental health center or the Department of Human Services who take part in pre-discharge planning and who work with Augusta Mental Health Institute patients during the period of hospitalization and attend Augusta Mental Health Institute team staffing?

ANSWER:

No.

QUESTION 4:

Is the consent for release and opportunity for review by the patient necessary in instances of proposed release of information to other state and federal departments for purposes other than direct third-party reimbursement?

ANSWER:

See reason.

QUESTION 5:

When Augusta Mental Health Institute transfers a patient to the Augusta General Hospital for treatment, must the consent for release of information be obtained prior to transmitting necessary medical information?

ANSWER:

No.

QUESTION 6:

If the transfer to the Augusta General Hospital of a patient from Augusta Mental Health Institute, or the referral of such patient for other medical treatment, is

undertaken in an emergency; e.g., the patient is critically ill, may information be given to the Augusta General Hospital or other treating agency by telephone or otherwise without the necessity of consent from the patient and an opportunity to review the information sought to be released?

ANSWER: Yes.

QUESTION 7:

Persons involved in contractual educational training have access to records of their assigned patients. Does this conflict with the requirement that the patients' identity remain undisclosed?

ANSWER:

Yes.

QUESTION 8:

Should information received from outside sources (other hospitals, private practitioners, etc.) be released, even under subpoena?

ANSWER:

See Reason.

QUESTION 9:

How do we respond to a judge's order to retain an original record in the custody of the court? May the court keep this record indefinitely?

ANSWER:

See Reason.

QUESTION 10:

How do we handle the situation of an incompetent patient, such as many of our nursing home residents, who do not have guardians or even close relatives, and information is required to be provided for placement in private nursing homes?

ANSWER:

See Reason.

QUESTION 11:

If a telephone call is received from a law enforcement agency stating that it is holding a named individual and wishes to determine whether he is an Augusta Mental Health Institute patient, how do we respond?

ANSWER:

See Reason.

QUESTION 12:

Do we need a release of information signed by the resident if we check "Yes" to the last question on the reverse side of Department of Human Services "Confidential Services Venereal Disease Case Report?" The last question reads, "Do you wish the patient interviewed for contacts?  Yes  No"

ANSWER:

No.

QUESTION 13:

Do we need resident permission to release information requested by the Department of Human Services Tuberculosis Control Program?

ANSWER:

No.

QUESTION 14:

Can we release autopsy information to (1) other physicians that have an interest in the case? (2) community mental health centers?

ANSWER: See Reason.

REASONS:

34 M.R.S.A. § 1-A, as enacted by § 2 of Chapter 495 of the Public Laws of 1975, provides:

"§1-A. Disclosure of information

"All orders of commitment, medical and administrative records, applications and reports and facts therein pertaining to any persons receiving services from the department, from any hospital pursuant to chapter 191, or from any facility licensed by the department pursuant to section 2052-A, shall be kept confidential and shall not be disclosed by any person except insofar:

"1. Consent of individual. As the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian,

having been given the opportunity to review the information sought to be disclosed shall consent;

"2. Necessity. As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191, or

"3. Court directive. As may be subpoenaed by a court of record subject to any limitations contained within the privileged communication provisions of Title 32.

"As to persons receiving services pursuant to chapters 184-A, 184-B, and 187, nothing in this section shall preclude disclosure, upon proper inquiry, of information relating to the physical condition or mental status of an individual receiving such services to any members of his or her family, his or her relatives or friends; nor the disclosure of biographical or medical information concerning the individual to commercial or governmental insurers, or any other corporation, association or agency from which the department may receive reimbursement for the care and treatment, education, training or support of the individual; nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any individual receiving such services in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program, the patient's identity shall remain undisclosed.

"Any person willfully violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

"This section shall not apply to the medical records and reports pertaining to persons receiving services from any private hospital pursuant to chapter 191."

1. The provisions of 34 M.R.S.A. § 1-A, as above quoted, apply identically to the Augusta Mental Health Institute and to community mental health centers, the latter being facilities licensed by the Department pursuant to 34 M.R.S.A. § 2052-A (excepted from the coverage of Title 34, § 1-A, are community mental health centers which are licensed as hospitals or other medical care facilities, see Title 34, § 2052-A). We take the legislative design of § 1-A to manifest a legislative recognition of the mental health services delivery system in this state as an integrated system involving inpatient facilities as well as outpatient facilities. The records of patients in each such facility are protected by section 1-A. We are, therefore, of the opinion that it is not necessary to obtain the consent of the patient to



disclosure, not to provide an opportunity for his review of the information to be disclosed, prior to disclosure of patient records of the Augusta Mental Health Institute to a community mental health center licensed under Section 2052-A. Furthermore, invariably such disclosure of information by the Augusta Mental Health Institute is necessary to carrying out the hospitalization provisions of Chapter 191 of Title 34, referred to in subsection 2 of Section 1-A; under such circumstances consent and an opportunity to review are not required.

In the event that a community mental health center falls within the above-cited exception to the licensure provisions of 34 M.R.S.A. § 2052-A; i.e., is licensed as a hospital or other medical care facility, and is also a private hospital specifically excluded from the coverage of Title 34, § 1-A, disclosure of information may be undertaken without consent or opportunity to review by the patient when such disclosure by the Augusta Mental Health Institute is necessary to carrying out the hospitalization provisions of Chapter 191 of Title 34; otherwise, consent to disclosure of information to such agencies requires consent and an opportunity to review.

2. When a patient of the Augusta Mental Health Institute is placed on convalescent status under 34 M.R.S.A. § 2375 incident to which the patient is to receive services from a community mental health center, it is our opinion that we have a signal example of a disclosure of information question appropriate for application of subsection 2 of § 1-A of Title 34. The mental health institute may well consider it necessary, in carrying out the convalescent status provision of 34 M.R.S.A. § 2375 as to such patient, to disclose information from the patient's records to the community mental health center. The determination of such necessity for disclosure obviates the acquisition of consent to release of information.

3. If the disclosure of information relative to a patient of the Augusta Mental Health Institute to an employee of a community mental health center or of the Department of Human Services who is involved in preparation of the patient for discharge or convalescent status or who is involved in the administration of the treatment or program of the patient, is considered necessary in order for the Augusta Mental Health Institute to carry out any of the provisions of Chapter 191 of Title 34 as to such patient; e. g., preparation for discharge under § 2374 or preparation for convalescent status under § 2375, such disclosure of information would fall within subsection 2 of § 1-A of Title 34 and can be undertaken without the prior consent of the patient and without having given the patient an opportunity to review the information to be made available to such worker.

4. When disclosure is for purposes other than direct third party reimbursement, it is our opinion that, unless disclosure by the Augusta Mental Health Institute of patient information to a department of state government or to a department of the federal government is necessary in carrying out any statutory function of the Department of Mental Health and Corrections, or any of the hospitalization provisions of chapter 191 of Title 34, prior consent of the patient to disclosure and an opportunity for his review of the information are required.

Some clarification is required in connection with question 4 which assumes that the third from the last paragraph of § 1-A of Title 34 is applicable to patients of the Augusta Mental Health Institute as an exception to the confidentiality provisions thereof:

"As to persons receiving services pursuant to chapters 184-A, 184-B, and 187, nothing in this section shall preclude disclosure, upon proper inquiry, of information relating to the physical condition or mental status of an individual receiving such services to any members of his or her family, his or her relatives or friends; nor the disclosure of biographical or medical information concerning the individual to commercial or governmental insurers, or any other corporation, association or agency from which the department may receive reimbursement for the care and treatment, education, training or support of the individual; nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any individual receiving such services in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program, the patient's identity shall remain undisclosed." (Emphasis supplied)

The quoted language includes reference to persons receiving services under Chapters 184-A, 184-B and 187 of Title 34; these are clients of the Elizabeth Levinson Center, Aroostook Residential Center and the Pineland Center, respectively. Patients of the Augusta Mental Health Institute are not the recipients of service under any of the cited chapters of Title 34. We are of the opinion, however, that, although omitted from the list of chapters set out in section 2 of Chapter 495 of the Public Laws of 1975, Chapter 191 must be included in such list, to the extent that persons receiving services from institutions of the Department of Mental Health and Corrections provided under Chapter 191 of Title 34 are covered. This would include patients of the Augusta Mental Health Institute and the Bangor Mental Health Institute. We reach this opinion for the following reasons. In L.D. 756, Chapter 191 was included in the referenced list. Committee Amendment A to the L.D. (H.P. 613) amended out the reference to Chapter 191 in the following language:

"Amend said Bill in that part designated '§1-A,' of section 2 by striking out in the 3rd and 4th lines of subsection 3 (4th and 5th lines in L.D.) the underlined punctuation, figures and work ', 187 and 191' and insert in place thereof the following 'and 187'."

Committee Amendment A also added the language which now appears as the last paragraph of Section 1-A; viz.,

"This section shall not apply to the medical records and reports pertaining to persons receiving services from any private hospital pursuant to chapter 191."

The Statement of Facts gives the reason for Committee Amendment A as follows:

"The purposes of this amendment are to remove the reference to chapter 191 from the provisions of subsection 3 of that part designated as '§1-A.' of section 2 of the bill being amended and to insure the

noninclusion of the medical records and reports pertaining to persons receiving services from any private hospital under Title 34, chapter 191 from the provisions of the bill being amended for the reason that private hospitals currently have an existing system for protecting the confidentiality of patient records." (Emphasis supplied)

It is clear that Committee Amendment A was intended by the legislature only to reach private hospitals and not public hospitals such as the Augusta Mental Health Institute. Section 2 of Chapter 495 of the Public Laws of 1975, as the most recent legislatively expressed policy relating to the confidentiality of records of persons receiving services from the Department of Mental Health and Corrections, is perhaps best explained in its intentment by the statement of facts accompanying L.D. 756.

"This bill would repeal all existing statutory provisions relating to the confidentiality of records and information concerning those persons receiving services from the Department of Mental Health and Corrections and enact one comprehensive provision which, while allowing disclosure under specific instances, would ensure that records and information concerning persons who do receive such services are kept confidential. The new section is patterned upon and would replace existing section 2256, as well as part of section 1, which only applies to Pineland Center and the 2 mental health institutes and hospitals providing mental health services. That part of section 1 which is proposed to be repealed has been so restrictive as to prevent disclosure of information when such disclosure has been requested by the individual involved and consented to by the department, as well as when such disclosure has been necessary in order to carry out statutory functions of the department."

Uniformity is perceived as the touchstone of this revision and consolidation of legislation relating to the records of the Department of Mental Health and Corrections. The predecessor legislation, 34 M.R.S.A. § 2256, which appeared within Chapter 191 of Title 34, made language identical to the underlined portion of the third from the last paragraph of § 1-A, above-quoted, applicable to the Augusta Mental Health Institute and the Bangor Mental Health Institute--each being a "hospital" as defined in 34 M.R.S.A. § 2251, sub-§ 3. The two mental health institutes are expressly referred to in 34 M.R.S.A. § 2511, which appears in Chapter 195, entitled "Support at State Institutions." It is a well-known fact that a substantial portion of the revenues received by the state as reimbursement for the provision of care and treatment at the two mental health institutes comes from Social Security and Medicare payments. The legislature established its policy in 34 M.R.S.A. § 2256 that biographical and medical information may be given to governmental agencies from which reimbursement for care and treatment may be received, setting forth the same as an exception to the confidentiality provisions of that section and carried such policy forward in its revision and consolidation appearing in section 1-A.

"The legislative department is supposed to have a consistent design and policy and to intend nothing inconsistent or incongruous." Whorff, Petr. v. Johnson, 143 ME 198 at 204.

The legislature can not be said to have intended differential treatment in connection with reimbursement functions of the Department of Mental Health and Corrections specifically as to disclosure of biographical and medical information to reimbursing governmental agencies dictated by the institution in which the patient receives reimbursible services.

For reasons above stated and for additional reasons set out below, we are of the opinion that the other provisions of the third from the last paragraph of § 1-A of Title 34 are also applicable to patients at the Augusta Mental Health Institute and Bangor Mental Health Institute and the list of chapters in that paragraph should be read to include persons receiving services from such public hospitals under Chapter 191, making operative such other exclusion provisions of that paragraph as to disclosures to relatives, etc., and disclosures in connection with educational programs. In these provisions of the paragraph we find reference to "mental status," a term peculiarly applicable to persons being treated for mental illness, and "public hospital," the only such entities being the Augusta Mental Health Institute and the Bangor Mental Health Institute. Again, all of the language appearing in the third from the last paragraph of § 1-A was taken directly from former, § 2256 of Title 34, which appeared as a section within Chapter 191, "Hospitalization of the Mentally Ill."

To summarize, we are of the opinion that all of the provisions of the third from the last paragraph of section 1-A of Title 34 apply to persons receiving services under Chapter 191 of Title 34 who are patients at public hospitals notwithstanding the omission of reference to Chapter 191 in the paragraph, such conclusion being mandated by the legislative history.

5. It is our opinion that it is not necessary to obtain prior consent to the release of information from the Augusta Mental Health Institute to the Augusta General Hospital in the event of the transfer of a patient thereto for medical treatment since the provision of medical treatment is mandated by the following provision of Chapter 191 of Title 34:

"Every patient shall be entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice." 34 M.R.S.A. § 2252

Such disclosure of information falls within subsection 2 of § 1-A of Title 34, the disclosure being necessary to the carrying out of one of the hospitalization provisions of Chapter 191.

We qualify this portion of this opinion by stating that subsection 2 of § 1-A of Title 34 would come into play in connection with disclosure of information incident to the Augusta General Hospital's provision of medical treatment only when the patient is transferred from the Augusta Mental Health Institute to the



Augusta General Hospital under the following provision of 34 M.R.S.A. § 2374:

"Except that if the patient is directly admitted to another hospital and it is the opinion of the head of the first hospital that the patient will directly reenter the first hospital within the foreseeable future, the patient need not be discharged." 34 M.R.S.A. § 2374

If the Augusta Mental Health Institute patient is discharged simultaneously with admission to the Augusta General Hospital, the patient would no longer be the responsibility of the Augusta Mental Health Institute as contemplated by the above-quoted provision of 34 M.R.S.A. § 2252, therefore eliminating the operative effect of subsection 2 of § 1-A of Title 34, no hospitalization provision of Chapter 191 being carried out by the Augusta Mental Health Institute after discharge. In such latter instance, prior consent of the former Augusta Mental Health Institute patient would be required before disclosure of information to the Augusta General Hospital.

6. The answer to question 6 is reached by the reasons set forth in the first paragraph of 5 above; question 6 adds only the element of emergency which does not change the result.

(We reserve expression of opinion as to the highly unlikely situation where in an emergency situation a critically physically ill patient of the Augusta Mental Health Institute might be discharged therefrom at the time of admission to the Augusta General Hospital or other treating facility).

7. For reasons set forth in #4 above, the following exception to confidentiality is considered applicable to patients of the Augusta Mental Health Institute:

" . . . nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any individual receiving services in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program, the patient's identity shall remain undisclosed." 34 M.R.S.A. § 1-A.

The quoted language is an exception to the requirement of confidentiality of patient records permitting student access to patient information as long as the identity of the patient is undisclosed.

8. The provisions of 34 M.R.S.A. § 1-A are not limited to writings relative to persons receiving services at the Augusta Mental Health Institute or from any other institution of the Department of Mental Health and Corrections which originate at any such facility. It is our opinion that § 1-A makes confidential any writings at any of such facilities relative to any person receiving service therefrom which are "orders of commitment, medical and administrative records, applications and

reports," and facts therein, whether such writings originate at the facility or are received from agencies or individuals outside such facilities and that any of such writings "may be subpoenaed by a court of record subject to any limitations contained within the privileged communication provisions of Title 32." 34 M.R.S.A. § 1-A, sub-§ 3.

Under subsection 3, any writing falling within the confidentiality provision of the first paragraph of § 1-A may be subpoenaed by a court. The limitations due to privilege referred to in sub-section 3 require no exercise of judgment or discretion on the part of Augusta Mental Health Institute staff. Privilege, where it exists, is subject to claim by the person holding the privilege during the judicial proceeding and is a matter to be dealt with by the court in the event that the claim of privilege is asserted.

9. Patient records of the Augusta Mental Health Institute are considered to be covered by 16 M.R.S.A. § 456 under which photostatic reproductions are admissible in evidence to the same extent that original records are admissible. (See also Maine Rules of Evidence, Rule 1005, effective February 2, 1976) It is suggested that when records of the hospital are subpoenaed, the custodian have copies of originals available. The court and participating counsel could then compare the original with the copies and the court could either admit the copies into evidence or admit the originals into evidence and permit substitution of the copies. With the availability of copies, we perceive no instance in which the court would insist upon the court's retention of original hospital records. (We can only suggest that, in the event a court insists upon retention of original hospital records, the hospital consult with this office in order that we may communicate with the court regarding the hospital's need to retain its original records and the propriety of substitution of copies).

10. 34 M.R.S.A. § 2374 provides:

"The head of a hospital shall, as frequently as practicable, but no less often than every 12 months, examine or cause to be examined every patient to determine his mental status and need for continuing hospitalization. The head of a hospital shall discharge, or cause to be discharged, any patient, and forward a report thereof to the department, whenever:

"1. Conditions. Conditions justifying hospitalization no longer obtain;"

and 34 M.R.S.A. § 2375 provides:

"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."

Both of these sections are contained within the hospitalization provisions of Chapter 191 of Title 34. The discharge or release on convalescent status of an

incompetent Augusta Mental Health Institute patient who is without a guardian when such discharge or release on convalescent status is to a private nursing home, will in all cases undoubtedly necessitate the disclosure of information relative to the patient to the staff of the nursing home. It is our opinion that such necessity would bring the disclosure of information within the exception provision of subsection 2 of section 1-A of Title 34, which reads:

"As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191, . . ."

11. When the Augusta Mental Health Institute receives a telephone inquiry confirmed to be from a law enforcement agency as to whether a person being held by such agency is a patient at the Augusta Mental Health Institute, it is our opinion that such telephone inquiry must be responded to by advising the agency as to whether the person being held is or is not an Augusta Mental Health Institute patient. If the person in police custody is a patient of Augusta Mental Health Institute, it has an obligation to have the person returned to the Institute in order to bring to bear the statutorily mandated care and treatment to which such patient is entitled under 34 M.R.S.A. Chapter 191. Certainly, as to such patient, acknowledgment of patient status to the law enforcement agency would be necessary in order to carry out any further hospitalization under Chapter 191, thus bringing the disclosure of patient identity within the exception provision of subsection 2 of § 1-A of Title 34; furthermore, under 34 M.R.S.A. § 133, a law enforcement officer has a duty to return a person absent without leave from the Augusta Mental Health Institute. Identification of the person in police custody as an Augusta Mental Health Institute patient may be necessary to the officer's fulfillment of his statutory duty.

"It shall be the duty of any sheriff, deputy sheriff, constable, police officer or other person finding any fugitive from any of said institutions at large to apprehend them without a warrant and return said fugitive to the institution from which the escape was made or to any officer or agent of the department. Such officer shall be paid a reasonable compensation by the State for his services." 34 M.R.S.A. § 133.

12. The reporting of venereal disease in connection with an Augusta Mental Health Institute patient is not subject to the confidentiality of records provisions of 34 M.R.S.A. § 1-A, such reporting, including the form and content of reports, are matters specifically controlled by 22 M.R.S.A. § 1094, which section is expressly applicable to persons hospitalized in an "asylum." This section reads pertinently:

"Syphilis, gonorrhea, chancroid and lymphogranuloma venereum are declared to be infectious and communicable diseases, dangerous to the public health.

"Every physician in the State, within 48 hours of the time the fact comes to the knowledge of said physician, shall report in writing to the Bureau of Health any person known by said physician to have any of such diseases, and shall keep a record of such cases by number, and name and address. Such report shall be made on a form furnished and numbered by the Bureau of

Health, which shall state only the age, sex and color of the person infected. In case such person having any of such diseases fails to observe the necessary precautions indicated in the treatment thereof, or in cases where financial obligations for treatment are incurred by the Bureau of Health, the name and address of such person shall be submitted at once to the Bureau of Health.

"All information and reports concerning persons suffering with venereal diseases shall be made on forms furnished and numbered by the Bureau of Health, shall be held confidential and shall not be available to any person not an agent of the said bureau, or for any other than a public health purpose.

"The chief officer having charge for the time being of any hospital, asylum, dispensary, jail, sanatorium or other similar private or public institution in the State shall report in like manner any cases of such diseases which come into his care or under his observation and shall comply with such rules and regulations as are made by the department to prevent the spread of venereal disease." 22 M.R.S.A. § 1094

We therefore conclude that the completion of all portions of the form prescribed by the Department of Human Services for the reporting of venereal diseases in connection with an Augusta Mental Health Institute patient may be undertaken without first obtaining the consent of the patient for release of information.

13. With respect to the reporting of tuberculosis in connection with an Augusta Mental Health Institute patient to the appropriate division of the Department of Human Services, we reach the same conclusion and advance the same reasons as are set forth in #12 above. The statute controlling in such instance provides as follows:

"Tuberculosis is declared to be an infectious and communicable disease, dangerous to the public health. Every physician in the State shall report in writing to the local health officer within 48 hours after the fact comes to the knowledge of said physicians, the name, age, sex, color, occupation, place where last employed, if known, and address of every person known by said physician to have tuberculosis. Such report shall be made on forms furnished by the department.

"The name of the householder, where the tuberculous person lives or boards, and such other facts as may be called for on the blank reports so furnished shall be included in the report. The chief officer having charge for the time being of any hospital, dispensary, asylum, sanatorium or other similar private or public institution in the State shall report to the department in like manner the name, age, sex, color, occupation, place where last employed, if known, and previous address of every patient having tuberculosis who comes into his care or under his observation, within 48 hours thereafter. Such physician or chief officer shall give notice to the department of the change of address of any tuberculous patient who is, or has lately been under his care, if he is able to give such information." 22 M.R.S.A. § 1041



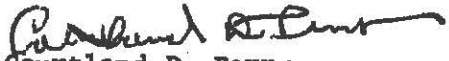
14. The release of a report of an autopsy performed upon the body of a deceased Augusta Mental Health Institute patient to a physician interested in the case or to a community mental health center is not controlled by 34 M.R.S.A. § 1-A. Generally, an autopsy is performed only after the spouse or next of kin in the exercise of a quasi property interest in the body of the deceased has given consent thereto. See generally, Hayt and Hayt, "Legal Aspects of Medical Records," Chapter XXIV, Autopsy Consents, p. 286 (1964). Since the authority rests with the surviving spouse or next of kin to permit or decline to permit the performance of an autopsy, it is our view that the surviving spouse or next of kin also possesses the authority to determine to whom the autopsy report will be given. We advise, therefore, that authorization be obtained from the person authorizing the autopsy before the Augusta Mental Health Institute furnishes an autopsy report relative to its deceased patient to an interested physician or a community mental health center. An exception to the above general rule operates in connection with an autopsy performed upon the body of a deceased patient required to be buried at public expense when no family member claims the body for burial. The applicable statute is as follows:

"All public officers, agents and servants of any and every county and municipality, and of any and every almshouse, prison, morgue, hospital or any other public institution having charge or control over dead human bodies required to be buried at the public expense are required to notify immediately the said board of distribution, or such person or persons as may from time to time be designated by said board, or its duly authorized officer or agent, whenever any such body or bodies come into his or their possession, charge or control, and shall, without fee or reward, deliver such body or bodies to said board or its duly authorized officer or agent, and permit and suffer the said board or its agents, or the physicians and surgeons from time to time designated by it or them, who comply with this chapter, to take and remove any and all such bodies to be used within the State for the advancement of medical education. No such notice need be given and no such body shall be delivered if any person, satisfying the authorities in charge of said body that he or she is a member of the family or next of kin to the deceased, shall claim the body for burial, but it shall be surrendered to him or her for interment, and no notice shall be given and no body delivered to said board or its agents if such deceased person was a traveler and not a vagabond, who died suddenly, in which case the said body shall be buried. The superintendents and medical staffs of the Augusta Mental Health Institute, the Bangor Mental Health Institute and Pineland Center, having charge or control over dead human bodies required to be buried at public expense, when no person satisfies the superintendent of either hospital for the mentally ill or the Pineland Center, and the Department of Mental Health and Corrections that he or she is a member of the family of, or some family connection or next of kin to the deceased, and wishes to claim the body for burial, may for the advancement of science hold an autopsy and examine the body of such person, notwithstanding any provisions of this chapter.

"Notwithstanding the availability of lump sum death benefits under the Federal Social Security Act, the term "buried at public expense" as written in this section shall be deemed to include the unclaimed dead bodies of

of all indigent persons otherwise within the intendment of this section."  
22 M.R.S.A. § 2883, as amended by P. & S.L. 1973, C. 53.

We are of the opinion that a report of an autopsy performed under this section may be furnished to a physician interested in the case or to a community mental health center when such report is furnished in furtherance of the purpose of the statute; the advancement of science.

  
Courtland D. Perry  
Assistant Attorney General

GDP/a