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Memo From

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7/27/76

Date: 7-27-76

To: John Burns, Chief of Forensic Services Dept: Bangor Mental Health Institute

Subject: EMERGENCY ADMISSION TO BANGOR MENTAL HEALTH INSTITUTE WITHOUT JUDICIAL ENDORSEMENT

FACTS:

- From time to time, persons have been admitted to the Bangor Mental Health Institute as involuntary patients pursuant to 34 M.R.S.A. §2333, having been delivered to the Institute by police officers, the application and certification form being without judicial endorsement. When, in the case of such admission, application has been made to the District Court for a judicial determination of need for hospitalization pursuant to 34 M.R.S.A. §2334, the court has dismissed the application upon the ground that due to the lack of judicial endorsement upon the application and certification form, the admission to the hospital was fatally defective and thus, the court cannot proceed to hear and adjudicate the matter. The result in these cases has been that persons considered by the professional staff of the Bangor Mental Health Institute to be mentally ill individuals and due to such mental illness, to present a likelihood of serious harm, thus being in need of treatment, have been summarily ordered discharged without hearing on the merits of the application. These circumstances have given rise to the questions stated below.

QUESTION:

Is judicial endorsement upon the application and certification form executed pursuant to 34 M.R.S.A. §2333 a legal condition precedent to admission to the Bangor Mental Health Institute?

ANSWER:

We answer, that it is not, for the reason that involuntary admission to a hospital for the mentally ill is subject by law (34 M.R.S.A. §2333) to two conditions precedent, completion of an application and certification by a licensed physician or licensed psychologist who practices clinical psychology and under the same section judicial endorsement relates only to authorization to health or law enforcement officer to take into custody and transport. (Sukeforth v. Thegan, 256 A. 2d, 162, 1969).

QUESTION:

Does absence of the judicial endorsement upon the application and certification form used to effect the involuntary admission of a person to the Bangor Mental Health Institute deprive the District Court of jurisdiction over an application filed pursuant to 34 M.R.S.A. §2333 and §2334, mandating dismissal of the application without hearing?

ANSWER:

We answer, that it does not, for the same reasons stated under the prior question and additionally for the reason that all that is required to be filed with the application to the court under 34 M.R.S.A. §2334 is a copy of the original emergency admission application and certification and a statement showing likelihood of serious harm and a certificate of a physician or psychologist; thus, the question of endorsement or lack of endorsement is in no way placed in issue before the District Court.

REASONING:

34 M.R.S.A. §§ 2333 and 2334 provide pertinently as follows:

"Emergency procedure; substantial risk of physical harm to self or others.

1. Admission. Any person may be admitted to a hospital upon:

A. Application. Written application which shall be made subject to the prohibitions and penalties of section 2259 to the hospital by any health officer or police officer or any other person stating his belief that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm within

(Emphasis supplied)

the definition as contained in section 2251, subsection 7, paragraphs A, B, or C, and the grounds for that belief; and

B. Certificate. A dated certificate by a licensed physician or a licensed psychologist who practices clinical psychology that he has examined the person on the date of the certificate and is of the opinion that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A, B, or C; provided however, that the date of such examination shall not be more than 3 days prior to the date of admission to the hospital. Such application and certificate, upon endorsement for such purpose by a judge of probate, a District Court Judge, a Superior Court Justice or a Complaint Justice, shall authorize any health or police officer to take the person whose admission is applied for into custody and transport him to a hospital as designated in the application."

(Emphasis supplied)

"Judicial procedure and commitment.

An application to the District Court filed pursuant to section 2333 shall be accompanied by a copy of the original emergency application, a copy of the physician's or psychologist's certificate and a statement showing that there is a likelihood of serious harm, as defined in section 2251, subsection 7, paragraph A, B or C. Each application shall be accompanied by a certificate of a licensed physician or a licensed psychologist who practices clinical psychology, which certificate shall contain a statement by the examiner that he has examined the patient and that it is his opinion that he is a mentally ill individual and, because of his illness, poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, B or C."

(Emphasis supplied)

The conditions precedent to an involuntary admission to a hospital for the mentally ill, such as the Bangor Mental Health Institute, are succinctly stated in §2333, i.e. application and certification of an examiner. The section does not make admission dependent upon judicial endorsement, but makes only the taking into custody and transportation of the proposed patient subject to judicial endorsement, and this - only when such custody and transportation are to be undertaken by a health or police officer (transportation to a hospital for the mentally ill of a person sought to be involuntarily admitted under 34 M.R.S.A. §2333 undertaken by a family member is without judicial endorsement). It is our opinion that involuntary admission to a hospital under §2333 is valid notwithstanding the transporting officer's failure to secure a judicial endorsement prior to taking into custody and transportation to the facility. The Maine Supreme

Judicial Court has addressed the relative significance of the certification of the examiner and judicial endorsement in its analysis of prior, pertinently similar provisions of 34 M.R.S.A. §2333 in Sukeforth v. Thegan, 256 A. 2d 162 (1969). In this case, the law court regarded as a quasi judicial act the certification of the examiner, regarding the certification as the necessary condition precedent to involuntary admission, and characterized the judicial endorsement as a ministerial act, relating only to custody and transportation, not to admission.

"Under §2333, however, there is no 'judicial tribunal' apart from the examining and certifying physician. The District Court Judge performs a purely ministerial act in ordering custody and transportation. He holds no hearing and exercises no judgment upon the merits or the need for restraint. His role is not unlike that of the clerk of a court who in a criminal case issues a mittimus pursuant to the judgment and decision of the court." Sukeforth, supra, at 163.

The judicial endorsement is the act determined necessary by the Legislature to cloak health or police officers with authority to take a person into custody and to transport him to a hospital. An officer taking into custody and transporting, without judicial endorsement, opens such officer to potential civil liability for false imprisonment during the time of custody and transportation, but the officer's failure to comply with the statute does not taint the admission of the person to the hospital nor subject hospital admitting personnel to similar liability.

For the above reasons, the judicial endorsement is not jurisdictional in connection with the District Court proceedings under 34 M.R.S.A. §2334 and for the further reason that under this section the judicial endorsement is not required to be brought to the attention of the District Court judge in connection with the proceedings, but only the original emergency application and certification. The fact that the form promulgated by the Department of Mental Health and Corrections under 34 M.R.S.A. §2258 includes the application, certification and judicial endorsement as a matter of convenience does not give more legal significance to

the judicial endorsement than is given it by §2333.

In summary, the Bangor Mental Health Institute may admit a person as an involuntary patient upon application and certification duly completed and absent judicial endorsement and may appropriately invoke the jurisdiction of the District Court for the purpose of judicial determination of need for hospitalization under Title 34 §2334 by compliance with that section through the filing of an application accompanied by a copy of the original emergency application and certification and the statement of the examining physician or psychologist required to accompany the court application. The applicant is not required, for the invocation of the court's jurisdiction, to demonstrate that a judicial endorsement has been executed when the proposed patient was transported to the institute by a health or police officer; the court's jurisdiction, thus, is not dependent upon an executed judicial endorsement at the time of emergency admission.



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