

MAINE STATE LEGISLATURE

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Mental Health Transfer of Patients

✓ 34 M.R.S.A. ~~2252~~ 2373

34 M.R.S.A. 2252

34 M.R.S.A. 2290

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AUGUSTA, MAINE 04333

September 20, 1976

The Honorable John L. Martin
Speaker of the House
House of Representatives
Augusta, Maine 04333

Dear Mr. Martin:

The following is in response to your request for the opinion of this office dated September 14, 1976, wherein you ask the following questions:

1. What specific steps would be required by state law of the Department of Mental Health and Corrections prior to the transfer of patients from the Bangor Mental Health Institute to the Augusta Mental Health Institute or other institution, and
2. Could a patient be transferred from the Bangor Mental Health Institute to the Augusta Mental Health Institute without his consent or the consent of his legal guardian.

For ease of reference we quote pertinently from 34 M.R.S.A. § 2373:

"The department may transfer, or authorize the transfer of, a patient from one hospital to another either within or out of State if the Department determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given to his legal guardian, parents or spouse, or if none be known, his nearest known relative or friend. In all such transfers, due consideration shall be given to the relationship of the patient to his family, legal guardian or friends, so as to maintain relationships and encourage visits beneficial to the patient."

In response to your first question, the conditions precedent to transfer of an individual patient from the Bangor Mental Health Institute to the Augusta Mental Health Institute or another "hospital," as defined in 34 M.R.S.A. § 2251, subsection 3, are (a) a determination that the transfer would be consistent with the medical

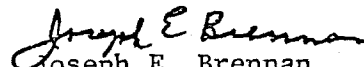
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needs of the patient, and (b) that the Department give due consideration to the relationship of the patient to his family, legal guardian or friends. Such consideration is to be with reference to the questions of maintenance of such relationships and encouragement of beneficial visits. The Legislature does not define the steps to be taken by the Department in evaluating these conditions precedent. It is our opinion that such steps are within the sound administrative discretion of the Department and are to be steps reasonably calculated to permit the Department an informed judgment as to the propriety of each transfer. It should be noted that the primary consideration is the determination of the consistency of the transfer with the medical needs of the patient, and consideration of the relationships question is important but secondary to the medical needs question. We reach this conclusion since the Legislature has given the Department of Mental Health and Corrections the authority to transfer "if" it determines that transfer would be consistent with the medical needs of the patient and has required only that the Department give "due" (which we construe to mean appropriate) consideration of the relationship of the patient to his family, his legal guardian or friends. "Due" (appropriate) consideration in an individual case may be determined by a perceived necessity for transfer consistent with the medical needs of the patient. In evaluating the consistency-of-medical-needs question, the Department should bear in mind the legislative standard set forth in 34 M.R.S.A. § 2252 that each patient is entitled "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."

In response to your second question, it is our opinion that prior consent to transfer is not required by Title 34, § 2373, either by the patient or his legal guardian, in the case of a transfer of an involuntarily committed patient. You will note that Title 34, §2373 requires only that notice be given of the transfer and that the statute does not require prior notice.

As to the voluntary patient, prior consent to transfer in fact operates since under Title 34 § 2290 the voluntary patient may leave the hospital at his election. Thus the voluntary patient may elect discharge from the hospital rather than accept transfer to another hospital.

Very truly yours,


Joseph E. Brennan
Attorney General

JEB/a