

MAINE STATE LEGISLATURE

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July 11, 2003

Sabra Burdick, Acting Commissioner
Department of Behavioral and Developmental Services
40 State House Station
Augusta, ME 04333

Dear Acting Commissioner Burdick:

In a letter dated June 3, 2003, you asked for a formal opinion from this office related to the name of the psychiatric facility under construction on the grounds of the Augusta Mental Health Institute ("AMHI"). Specifically, you asked whether the Department of Behavioral and Developmental Services ("the Department") can rely on last year's legislative resolve to use the name Riverview Psychiatric Center for the new facility and whether that resolve allows the statutory functions assigned to AMHI to be performed by the Riverview Psychiatric Center when it opens. Our response follows.

Question 1: Can the Department of Behavioral and Developmental Services name the new facility on the AMHI grounds the Riverview Psychiatric Center?

Answer 1: Yes. As you know, on July 25, 2002, a legislative resolve to name the new psychiatric treatment center in Augusta went into effect. The entire text of the resolve is "Sec. 1. Name for psychiatric center. Resolved: That the new psychiatric treatment center located in Augusta be named Riverview Psychiatric Center." Resolves 2001, ch. 79. There is little question, based on the plain language of this resolve, that the Legislature intended the new center to be named Riverview Psychiatric Center. Legislative resolves have the force of law. *Moulton v. Scully*, 11 Me. 428, 448, 89 A. 944, 953 (1914). Given the express language of the resolve, the Department may appropriately rely on that Legislative directive and name the new center the Riverview Psychiatric Center.

Question 2: Can the Riverview Psychiatric Center undertake the obligations and functions statutorily assigned to the Augusta Mental Health Institute?

Answer 2: Yes. There are a number of statutes that refer to governmental functions to be undertaken specifically by AMHI. For example, under existing statutes, the Department is to maintain a facility for the mentally ill in Augusta called the Augusta

Mental Health Institute. 34-B M.R.S.A. § 3201. A superintendent appointed specifically for AMHI has the statutory authority to run that facility and receive patients legally sent there. 34-B M.R.S.A. § 3202. Neither the legislative resolve cited above nor any other legislative enactment we are aware of has expressly stated that the new psychiatric facility is intended to assume the statutory functions of AMHI. However, many steps taken over the past several years in the legislative and administrative arenas, as well as in the public debate, have presupposed that the new psychiatric center would replace AMHI.

An overview of the history of AMHI, the State's provision of inpatient mental health services, and the development of the plan to build a new psychiatric treatment center replacing AMHI in Augusta is provided in several key documents. In 2000, the Legislature received the final report of *The Maine Psychiatric Initiative: Civil & Forensic*, which presented a needs assessment and recommended the construction of the new center to cover the need for state-operated inpatient psychiatric beds. That report, dated February 29, 2000 and prepared by SMRT, Inc., Pulitzer/Bogard & Associates, L.L.C., and Architecture +, still serves as the basic plan for the center. Second, the Augusta State Facilities Master Plan, dated August 29, 2000 and approved by the Legislature in 2001 Resolves, Chapter 34, describes plans for renovation of the core AMHI campus buildings for office space once the new treatment facility is in operation. Finally, the Department's application for a Certificate of Need (CON) for the new center, and the CON that was issued indicate that AMHI will cease to operate once the new center is up and running.

This history of legislative and administrative actions is sufficient to support the conclusion that the new hospital facility, named the Riverview Psychiatric Center by legislative resolve, is the legal successor to AMHI as the State mental health facility serving the southern part of the State. Indeed, if the lack of statutory transition language is fatal to the use of the new facility once it is built, the Legislature's intent will be frustrated rather than effected.

This is not to say that a transition provision is unnecessary. By conforming the name of the center in the statutes, the Legislature could alleviate confusion as well as minimize the potential for legal challenges. In the meantime, the name "Riverview Psychiatric Center" should be used for the new hospital facility under construction on the AMHI grounds, and upon its completion it may legally assume the role in the State's mental health system performed by AMHI pursuant to statute.

Sincerely,



G. STEVEN ROWE
Attorney General