

OPINION NO. 828**Syllabus:**

1. A community service mental hygiene and psychiatric clinic established by the Bureau of Prevention and Education, Division of Mental Hygiene, under Section 5123.05, Revised Code, has authority under Section 5121.03, Revised Code, to charge out-patients for their services.

2. The Division of Mental Hygiene of the Department of Mental Hygiene and Correction may establish and publish a schedule of fees to be charged at non-hospital based community service clinics established pursuant to Section 5123.05, Revised Code.

3. A private clinic cooperating with a resident community service clinic established pursuant to Section 5123.05, Revised Code, may collect and retain charges for non-professional services supplied to patients. (Opinion No. 3248, Opinions of the Attorney General for 1953 approved and followed).

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To: Martin A. Janis, Director of Department of Mental Hygiene and Correction, Columbus, Ohio

By: William B. Saxbe, Attorney General, January 28, 1964

I am in receipt of your request for my opinion in which you raise the following questions:

1. Do the provisions of Amended Substitute H.B. No. 6 and Amended Substitute H.B. 818, passed by the 105th General Assembly effective September 30 and October 10, 1963, respectively, apply to community service mental hygiene and psychiatric clinics established pursuant to Section 5123.05, Revised Code?

2. May the Department of Mental Hygiene and Correction establish and publish a schedule of fees for these non-hospital based community service clinics?

3. May a private clinic cooperating with a resident non-hospital based community service clinic charge and retain a fee for non-professional services rendered to patients?

Section 5123.05, Revised Code, reads as follows:

"There shall be created a bureau of pre-

vention and education under the supervision of the commissioner of mental hygiene. The bureau shall:

(A) Promote and develop a state-wide comprehensive system of mental hygiene and psychiatric clinics and establish resident and traveling clinics to serve communities where local clinical facilities are lacking or inadequate;

(B) In cooperation with other departments and agencies, disseminate information as to mental hygiene and psychiatric facilities and services, including institutions and clinics provided for the counsel, care, and treatment of those in need thereof;

(C) Perform such other duties as are assigned to it by the commissioner."

It was concluded in Opinion No. 2366, Opinions of the Attorney General for 1953, that the Division of Mental Hygiene could not contribute money under this section to assist in the support of a local private non-profit mental hygiene clinic established to serve a specified territory, nor assign its employees to work in such a clinic. It was further concluded, however, "that the division does have authority, under the provisions of Section 1890-9, General Code, (substantially the same as present Section 5123.05, Revised Code,) to 'establish resident * * * clinics * * * where local clinical facilities are * * * inadequate,' and any such resident clinics may be established in such close association with a clinic established by a corporation not for profit, and operated in such close cooperation with it that the two clinics will, for many practical purposes, be operated as an integrated project. In any such case, however, it will be necessary to preserve the separate entity of each clinic in matters involving control of operations and financial support."

The question remains of whether the local clinics, and particularly the Division of Mental Hygiene could legally charge fees for services rendered by local clinics. In Opinion No. 3248, Opinions of the Attorney General for 1953, it was concluded that the Division of Mental Hygiene possessed no statutory authority to collect fees for the treatment of patients in clinics established under the provisions of Section 5123.05, Revised Code. At the same time it was stated that, if the division should find it practicable to cooperate with a private organization in the operation of a clinic, "the lack of statutory authority on the part of the division to make a charge for the services supplied by the public clinic does not operate so as to prevent such private organization from making and collecting a charge for such non-professional services as may be supplied by the private clinic to patients who are able to pay such charge."

In Amended Substitute House Bill No. 818, Section 5121.03, Revised Code, was amended by adding the following pertinent language:

"* * * The cost of services for a patient

receiving pre-admission care, after-care, day-care, or routine consultation and treatment services in a community service unit under the jurisdiction of the department of mental hygiene and correction, shall be computed on the basis of the average cost of such services."

This amendment clearly departs from the conclusion rendered in Opinion No. 3248, *supra*. Prior to the amendment, as stated in the Opinion, the division was under no legal duty, and possessed no statutory authority to charge for services supplied by the division at a public clinic. Now there is a statutory mandate requiring the division to compute the average cost of out-patient services of the several types mentioned. Subsequent sections of Chapter 5121, Revised Code, have been amended making such patients, their liable relatives, and their estates liable for such costs.

Section 5122.231, Revised Code, enacted by the adoption of Amended Substitute House Bill No. 6, reads as follows:

"Any person who has been hospitalized under Chapter 5122. of the Revised Code, may, at any time after discharge from such hospitalization, make application to the head of any public hospital, within whose district he resides, for therapy and medication if such person feels he is in need of such services. If the head of the hospital determines the applicant to be in need of such services and indigent, he may provide under the medical supervision of a hospital physician, such services of therapy and medication related to mental illness as are required for the mental health of such applicant.

"Any person may apply to the head of any public hospital, within whose district he resides for therapy and medication if such person feels he is in need of such services. If his condition warrants, he may be enrolled as an out-patient and, during such enrollment while under medical supervision of a hospital physician, may receive therapy and medication for mental illness, subject to the provisions of Chapter 5121. of the Revised Code.

"The application prescribed in the first paragraph of this section may also be made on behalf of a minor by a parent, guardian, or person having custody of the minor, and on behalf of an adult by a guardian or person having custody of the adult.

"The head of the public hospital may refer any indigent discharged patient, who makes an application under this section, to the director of any mental health clinic serving the county in which such patient resides, or to such other facility as the chief of the division of mental hygiene, as the 'commissioner of mental hygiene,' may designate. Upon notice of such referral,

the director of such clinic or the head of such other facility may provide the services specified in the first paragraph of this section.

"The director of mental hygiene and correction may apply for any federal funds, or other assistance, which are authorized for use in providing local mental health community services, and use such funds for the expansion and improvement of local mental health community services under the jurisdiction of the department of mental hygiene and correction, including the services prescribed by this section. The director may adopt all necessary rules and regulations for the implementation of this section. Nothing in these sections is intended to repeal, amend, or otherwise affect any of the existing drug laws of this state."

This section eliminates any doubt regarding the places at which out-patient services may be rendered. Any person who feels in need of such services may apply to the head of the public hospital in his district for assistance and, if his condition warrants, may receive therapy and medication for his mental illness subject to the liability for the average cost of such services as provided in Chapter 5121, Revised Code.

The fourth paragraph of Section 5122.231, *supra*, permits the head of the hospital to refer the patient to the director of any mental health clinic serving the county in which the patient resides. The head of the clinic may then provide "such services of therapy and medication related to mental illness as are required for the mental health of such applicant." Since the referral may be to "any mental health clinic," it may be to a community service clinic established under Section 5123.05, Revised Code.

No rights have been taken away from the local mental health cooperating clinics operated by a private organization hence, under Opinion No. 3248, *supra*, it must be concluded they continue to have the same right to charge for their non-professional services. In addition, the division of mental hygiene is now authorized and directed to make charges for the services it furnishes to patients at non-hospital based community service clinics.

While the statutes under consideration make no specific reference to the establishment and publication of a schedule of fees to be charged by non-hospital based clinics, there is nothing to indicate the charges to be made are to be kept secret. Section 5121.03, Revised Code, states that the cost of such services shall be computed on the basis of the average cost of such services. Presumably, the result of such computation would be public information. Similar computations for the cost of services for in-patients are given wide publicity. A scale of charges to be made against in-patients with dependents and against liable relatives with and without dependents is set forth in Section 5121.04 (B) (2), Revised Code. It seems logical to have prepared a similar table of rates for out-patients and their liable

relatives, so long as it does not conflict with Section 5121.04 (B) (9), which now reads:

"The rate to be charged for pre-admission care, after-care, day-care, or routine consultation and treatment services shall be based upon the ability of the patient or his liable relatives to pay, but shall not be less than one dollar or more than ten dollars per visit as determined by the department of mental hygiene and correction."

A further limitation on the right to charge liable relatives is found in Section 5121.06 (D), Revised Code, which reads:

"Irrespective of the number of patients whose care might be chargeable against a liable relative, no individual liable relative nor any group of liable relatives who are members of the same family unit shall be charged with the support of more than one patient."

Since the establishment of a schedule of fees for out-patients is for practical purposes essential under the amendments to Chapter 5121, Revised Code, and since there is no inhibition, either express or implied, against the publication of such schedule of fees, it is my opinion that such publication is both permissive and desirable.

In Opinion No. 3248, supra, it was said that a hospital corporation, whether or not organized for profit, is entitled to a fair compensation for the use of technical equipment owned by it and used by a physician in the performance of professional services as well as non-professional services supplied to such physician. It was recognized that the locally established clinics could also make charges for such services as well as for the value of the quarters furnished, including utilities. Among other things the then Attorney General said:

"Accordingly, if you should find it practical for the division to participate with a locally established private clinic in the operation of such a cooperative project, I perceive no reason why the lack of statutory authority on the part of the division to make a charge for the services supplied by the public clinic should operate in such a way as to prevent the private organization from making and collecting a charge for such non-professional services as may be supplied by the private clinic to patients who are able to pay such charge."

Although it was not categorically stated that the private clinic could retain and use the money collected by it for its non-professional services, no other inference can be drawn from the opinion. Since the law dealing with the cooperating private clinics remains unchanged, it must be

assumed that the private clinics still have a right to retain and use their own money.

In conclusion, answering your questions specifically, it is my opinion and you are advised that:

1. A community service mental hygiene and psychiatric clinic established by the Bureau of Prevention and Education, Division of Mental Hygiene, under Section 5123.05, Revised Code, has authority under Section 5121.03, Revised Code, to charge out-patients for their services.

2. The Division of Mental Hygiene of the Department of Mental Hygiene and Correction may establish and publish a schedule of fees to be charged at non-hospital based community service clinics established pursuant to Section 5123.05, Revised Code.

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