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1. PATIENT ADJUDGED MENTALLY ILL—PLACED IN RECEIVING HOSPITAL OR COMMITTED TO STATE HOSPITAL—SECTION 5123.23 R. C.—INCOMPETENT TO CONTRACT OR EXECUTE INSTRUMENTS—SECTION 5123.57 R. C.—WITHOUT APPROVAL OF COURT.
2. MENTAL HYGIENE AND CORRECTION—PATIENT MAY BE TRANSFERRED TO STATE HOSPITAL BY DIRECTOR OR COMMISSIONER—SECTION 5123.47 R. C.—PROVIDED MEDICAL FINDING THAT PATIENT IS PROPER SUBJECT FOR ADMISSION.
3. PROPRIETY OF CONFINEMENT—SUBJECT TO HABEAS CORPUS.
4. CONFINEMENT WITHOUT A WARRANT—RECEIVING HOSPITAL—SECTION 5123.22 R. C. CARE AND TREATMENT MAY BE RENDERED TO AVOID FURTHER DETERIORATION IN CONDITION.

## SYLLABUS:

1. A patient who has been adjudged mentally ill by a probate court and has been ordered either placed in a receiving hospital or committed to a state hospital pursuant to Section 5123.23, Revised Code, thereby becomes subject to Section 5123.57, Revised Code, and, accordingly, is incompetent to contract or execute instruments without the allowance and approval of such court.

2. A patient who, pursuant to the provisions of Section 5123.23, Revised Code, has been placed in a receiving hospital may be transferred to a state hospital by the director of mental hygiene and correction or the commissioner of mental hygiene pursuant to the authorization as contained in Section 5123.47, Revised Code, provided the director or commissioner, as the case may be, makes the necessary medical finding that the patient is a proper subject for admission to such state hospital.

3. The propriety of the original confinement or the continued confinement of any patient in a state hospital or other institution is always subject to review and consideration by the appropriate courts on a writ of habeas corpus.

4. Where a person, who is suspected of being mentally ill, is confined without a warrant in a receiving hospital pursuant to Section 5123.22, Revised Code, for the limited period therein prescribed, such physical and mental care and treatment may be rendered, as will, in the considered opinion of the supervisory authority of such hospital, avoid further deterioration in such person's condition and protect him from causing injury to himself.

Columbus, Ohio, September 13, 1956

Hon. John D. Porterfield, Director  
Department of Mental Hygiene and Correction  
Columbus, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“The recent passage of Amended Substitute Senate Bill 333, a portion of which is now 5123.23 of the Revised Code, has raised several questions on administrative procedure with relation to patients in our state hospitals. The section involved is quoted as follows:

“Sec. 5123.23—On the day set for hearing the probate judge or a deputy clerk who has been appointed to act as referee as provided by section 2315.37 of the Revised Code shall, without the intervention of a jury, proceed to examine the person alleged to be mentally ill, the witness in attendance, and further witnesses that such judge or referee desires to call. He shall cause an examination of such person to be made by at least one physician and a report of such examination to be made a part of the court record. Upon the hearing of the testimony, which hearing may be had at any place within the county, as the probate judge designates, and after receiving the report of the physician, *if such judge finds and determines that the person charged is mentally ill* and in need of specialized care and treatment, he may by order duly entered proceed as follows:

“(A) *Order that such person be placed in a receiving hospital for observation or treatment, or both, or commit such person to the proper state hospital for the mentally ill for treatment;*

“(B) *Commit such person to the department of mental hygiene and correction and deliver him to the facility provided by the department for persons described in section 5125.04 of the Revised Code:*

“(C) *Commit such person to the veterans administration or other agency of the United States government, as provided by section 5905.02 of the Revised Code;*

“(D) *Order that such person be placed in a private hospital, home or institution, licensed and approved by the division of mental hygiene, at the expense of such person or at county expense, until further order of the probate judge;*

“(E) *Remand such person to the custody of a relative, friend or other suitable person until further order of the probate judge;*

“(F) *Order such person placed in the county home or other place provided by the board of county commissioners until further order of the probate Judge.*

“If the court finds such person not to be mentally ill it shall order his discharge forthwith.

“No such person shall be committed under division (C) placed under divisions (D) and (F), or remanded under division (E) until after consent to accept such person is received from the designated institution, hospital, home, suitable person, veterans administration, or other agency of the United States government.

“The medical witnesses provided by this section and section 5123.24 of the Revised Code must be registered physicians in Ohio and must have had at least three years’ experience in the practice of medicine.” (Emphasis ours.)

“With reference to the underlined portions of the above statutes, we wish to submit for your consideration the following questions:

“1. Does ‘placement’ in a receiving hospital, as set forth in 5123.23 ppA have the same effect as commitment regarding the removal of a patient’s civil rights in view of sec. 5123.51 R. C.? Is placement tantamount to commitment as the term commitment is used in Title 51 R. C.?”

“2. If a patient is ‘placed’ in a receiving hospital, under 5123.23, ppA, can the Department of Mental Hygiene and Correction, Division of Mental Hygiene, transfer him, under the provisions of 5123.47 R. C., to a state hospital (long-term treat-

ment) on the basis of the court placement or must the Department of Mental Hygiene and Correction, Division of Mental Hygiene have the patient committed to the state hospital by the court that 'placed' the patient in the receiving hospital?

"3. What effect does a 'placement' by the court have, as to the patient's civil rights, under paragraphs D and F of Sec. 5123.23 R. C.?

"4. Does a court placement, under 5123.23, ppA, R. C., operate to place the patient in the custody of the Department of Mental Hygiene and Correction and the superintendent of the hospital as referred to in 5123.43 or is the patient in any way subject to further order of the court?

"5. When a patient is admitted to a receiving hospital, or a state hospital, under the terms of Sec. 5123.22 R. C., does the superintendent of said hospital have the authority to administer to the patient any psychiatric or other treatment which the superintendent or his staff may deem necessary, as is the case with other patients or is the superintendent and his staff limited to such physical emergency treatment as may be necessary?"

In consideration of your first question relative to what you have called the "civil rights" of a patient, I assume you have reference to the loss of capacity to contract or execute instruments as set forth in Section 5123.57, Revised Code, which provides as follows:

"Excepting a sane epileptic or a patient upon voluntary admission, no patient in a hospital operated by the department of mental hygiene and correction, division of mental hygiene, or a patient on trial visit therefrom, shall be competent to enter into any agreement or execute a contract, deed, or other instrument unless it has been approved and allowed by the court committing him by an order entered on the journal of said court. A certified copy of such order of the court shall be attached to such contract, deed, or instrument.

"The discharge of a patient shall not operate as a discharge of a legally appointed guardian of the person or estate of such person."

It is apparent from the foregoing that the criterion upon which a patient is deprived of what you have referred to as his civil rights is his presence in a hospital operated by your department. This being the case, it would appear to be immaterial whether he is there by virtue of a placement in a receiving hospital by order of the Probate Court, or commitment to another state hospital by like order. Section 5123.23, Revised Code, which you have quoted in your letter of inquiry, is suggestive of the fact

that the legislature recognized a distinction between placement in a receiving hospital and commitment to a state hospital. Moreover, Section 5123.13, Revised Code, dedicates the use of receiving hospitals to the “\* \* \* observation, care, and treatment of the mentally ill, and especially for those whose condition is incipient, mild, or of possible short duration \* \* \*.” I would gather, therefore, that a placement in a receiving hospital contemplates observation or short range treatment, or both, whereas commitment to a state hospital is undoubtedly predicated on a long range situation. Nevertheless, in so far as the application of Section 5123.57, supra, and the consequent loss of capacity to contract or execute instruments, is concerned, the distinction between placement in a receiving hospital and commitment to a state hospital appears to constitute a distinction without substantial difference.

With respect to your second question, your attention is called to Section 5123.47, Revised Code, which states as follows:

“The director of mental hygiene and correction or the commissioner of mental hygiene may transfer to and from any hospital within the division of mental hygiene any inmate who, in the opinion of the director or the commissioner, is a proper subject for admission to the hospital to which he is to be transferred. A report of such transfer shall be entered in the records of the department of public welfare. The commitment papers, together with an abstract of the inmate’s hospital case record, shall be transmitted with such inmate to the hospital to which he is transferred.”

Here again the statute makes no distinction between receiving hospitals or other hospitals and it would appear that once a patient has been placed in any hospital under the jurisdiction of the Division of Mental Hygiene and Correction, he may be transferred to any other hospital provided that the Director makes the necessary statutory finding that, in his opinion, the patient is a proper subject for admission to the hospital to which he is to be transferred. Such a finding is in my opinion a purely medical one.

With respect to your third question—it is noted that paragraphs (D) and (F) of Section 5123.23, supra, to which you have referred, concern the confinement of a mentally ill person in hospitals, homes or institutions which, while they may or may not be licensed by your department, are in no sense “operated” by your department within the meaning of Section 5123.57, supra. It would, accordingly, appear that the question of the effect on the patient’s so called civil rights upon confinement in such

institution or in a private home is not a matter of official concern of your department inasmuch as the patient is not in your custody and control. Consequently, unless there is some particular circumstance which makes the answer to your third question a matter for your official cognizance I will not render an answer thereto at this time.

With respect to your fourth question, Section 5123.43, Revised Code, provides as follows :

“The superintendent of an institution, under the control of the division of mental hygiene, shall have exclusive custody and control of the person of the patient during the period of time he is detained for observation or treatment or both, whether a guardian of the person of said patient has been appointed or is appointed by any probate court.”

Notwithstanding the provisions of this section it is apparent that a patient in any state institution is always subject to further order of the court under its inherent power to determine the question as to the propriety of the original confinement or further confinement in any institution pursuant to a writ of habeas corpus. It is my understanding, however, from conversation with you, that the primary purpose of asking your fourth question was with respect to your rights to transfer the patient in the manner suggested by your second question. In so far as this aspect of your fourth question is concerned, you are referred to my answer to your second question.

With respect to your fifth question, Section 5123.22, Revised Code, to which you have referred, is concerned with the confinement in a receiving hospital or municipal or county jail without a warrant of a person believed to be mentally ill. Your question relates to the type of treatment which might be administered to such person during the period of time he is so confined under that section. It is noted that there is a limit of five days during which he may be detained in such receiving hospital. The statute implicitly requires that within this period of time the suspected mentally ill person should be brought before the proper Probate Court for placement or commitment under Section 5123.23, supra. Bearing in mind that the person who is in the custody of your institution during this period of a maximum of five days has not been judicially found to be mentally ill, and assuming that his confinement is probably without his consent if not against his will, it would appear that the type of treatment you would be permitted to administer would be such as might, in the

field of psychiatry or mental treatment, be analagous to first aid in the field of surgery or physical treatment. It is impossible to lay down any hard, fast or definite rule as to the precise extent of such treatment. I believe, however, that the governing principle should be that such physical and mental care or treatment should be given as will avoid further deterioration in his condition and protect him from causing injury to himself. The precise application of this principle to an individual case will, of course, be a matter for the considered discretion of the supervisory authority of the institution concerned.

Accordingly, and in specific answer to your inquiry, it is my opinion and you are advised that:

1. A patient who has been adjudged mentally ill by a probate court and has been ordered either placed in a receiving hospital or committed to a state hospital pursuant to Section 5123.23, Revised Code, thereby becomes subject to Section 5123.57, Revised Code, and, accordingly, is incompetent to contract or execute instruments without the allowance and approval of such court.

2. A patient who, pursuant to the provisions of Section 5123.23, Revised Code, has been placed in a receiving hospital may be transferred to a state hospital by the director of mental hygiene and correction or the commissioner of mental hygiene pursuant to the authorization as contained in Section 5123.47, Revised Code, provided the director or commissioner, as the case may be, makes the necessary medical finding that the patient is a proper subject for admission to such state hospital.

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4. Where a person, who is suspected of being mentally ill, is confined without a warrant in a receiving hospital pursuant to Section 5123.22, Revised Code, for the limited period therein prescribed, such physical and mental care and treatment may be rendered, as will, in the considered opinion of the supervisory authority of such hospital, avoid further deterioration in such person's condition and protect him from causing injury to himself.

Respectfully,

C. WILLIAM O'NEILL

Attorney General