

OPINION NO. 71-072**Syllabus:**

While the superintendent of an institution operated by the Department of Mental Hygiene and Correction has no duty to provide for the support of a patient after final discharge, the circumstances may be such as to require that, as a part of his examination to determine the patient's fitness for discharge, the superintendent should inquire into and make sure that an arrangement for his support exists if such support is necessary for his continued mental health.

To: James T. Welsh, Acting Director, Ohio Dept. of Mental Hygiene and Correction, Columbus, Ohio
By: William J. Brown, Attorney General, November 3, 1971

I have before me your request for my opinion, which reads as follows:

"When the superintendent of an institution operated by the Department of Mental Hygiene and Correction determines that the conditions which justified the involuntary hospitalization of a patient no longer obtain, what is the legal duty of the superintendent to inquire into and to arrange for the support of the patient after discharge when:

- "1. Patient has very limited means or none whatever?
- "2. Patient has substantial means?
- "3. Patient himself, his relative, his friend, or the guardian of his person and estate object to discharge?"

It is clear that such a patient must be frequently re-examined, and that the superintendent is obliged to release him when his condition no longer warrants hospitalization. Section 5122.21, Revised Code, reads, in part, as follows:

"The head of a hospital shall as frequently as practicable examine or cause to be examined every patient and whenever he determines that the conditions justifying involuntary hospitalization no longer obtain, discharge the patient not under indictment or conviction for crime and immediately make a report thereof to the division of mental hygiene.

"After a finding pursuant to section 5122.15 * * * that an individual is * * * subject to hospitalization * * * no continuing jurisdiction remains in the probate court. Plenary power is granted to the officers of a public hospital to grant a discharge. * * *"

It is also clear that the superintendent has a legal duty under Section 5123.03, Revised Code, to arrange for the support of patients while they are hospitalized. That Section also implies that the superintendent has a similar duty with respect to a patient who is released on trial visit, for it provides:

"* * * Such head shall also be guardian of the person of the patient for the purpose of release on trial visit and shall retain the right of custody during the period of such trial visit. Such head may determine the place of abode of such patient while on trial visit irrespective of the existence of a guardian of the person appointed by the probate court."

And Section 2111.06, Revised Code, reads, in part, as follows:

"* * * A guardian of the person shall * * * provide for the maintenance of the ward, * * *."

Consequently, the superintendent is required to arrange for the support of a patient released on trial visit. See Sections 5121.04 to 5121.06, Revised Code.

The superintendent is, of course, relieved of his duties as guardian of the person of a patient discharged under Section 5122.21, *supra*, because Section 5122.36, Revised Code, provides that "* * * [f]inal discharge pursuant to section 5122.21 of the Revised Code operates as a restoration of legal competency * * *." Branch No. 2 of the Syllabus in Opinion No. 3342, Opinions of the Attorney General for 1931, reads as follows:

"The discharge of a patient, who is not under guardianship, from a state hospital under the provisions of section 1964 [General Code, now Section 5122.21, Revised Code], will restore such patient to his original status."

Since the superintendent is no longer the guardian of a person who has been discharged, he has no duty to provide support for such an individual.

The question of support after discharge may, however, under certain circumstances, be a crucial one in the superintendent's examination to determine whether the conditions which required involuntary hospitalization of the patient still obtain. That determination is primarily a forecast of the patient's present ability to cope with the stresses and strains of society, and to ignore the question of his support after discharge would be to neglect a factor important to his continued mental health. If, for example, financial difficulties lay at the root of the original mental disorder, and the superintendent's examination reveals that, if discharged, the patient will find himself in much the same situation, the superintendent might well determine that under such circumstances the patient's present condition would not justify a discharge. It is, therefore, the superintendent's duty, at least to this extent, to inquire into the patient's means of support before making a determination that he should be discharged.

The General Assembly has suggested one method of conducting such an inquiry, and, indeed, of arranging for the patient's support after discharge, in providing for the trial visit. Section 5122.23, Revised Code, reads, in pertinent part, as follows:

"When the head of a hospital deems it in the best interest of a patient, he may permit such patient to leave the institution on a trial visit, for such period of time and under such conditions as are proper and in the best interest of the patient and the public welfare. * * * Prior to the end of the year on trial status, and not less frequently than annually thereafter, the head of the hospital shall reexamine the facts relating to the hospitalization of the patient on trial visit status, and, if he determines that in view of the condition of the patient hospitalization is no longer necessary, he shall discharge the patient, * * *."

It is clear that such a visit, if feasible, affords the superintendent a means of ascertaining whether the arrangements for the patient's support are such as to justify a forecast that he will be able to cope with the demands of ordinary life.

What has been said above applies in all three of the situations mentioned in your questions. In large part, the scope of the superintendent's examination of the patient's fitness for discharge must rest within his own sound discretion. Limited means are clearly relevant to a patient's ability to cope with the demands of society. While substantial means would eliminate the stress of financial need, the superintendent must nevertheless give some consideration to the effect of the patient's particular means of support on his mental health. Finally, where objections are raised to the patient's discharge, the whole point may be that inability of relatives to provide adequate support is likely to lead to a relapse. On the other hand, if there is evidence that relatives are opposed to the patient's restoration to his proper place in society because they want to retain control of his estate, there is a domestic situation which could endanger the patient's mental health, and the superintendent must decide how best to further his rehabilitation by choice and timing of the techniques at his disposal. See, e.g., Section 5122.23, supra.

In specific answer to your questions it is my opinion, and you are so advised, that while the superintendent of an institution operated by the Department of Mental Hygiene and Correction has no duty to provide for the support of a patient after final discharge, the circumstances may be such as to require that, as a part of his examination to determine the patient's fitness for discharge, the superintendent should inquire into and make sure that an arrangement for his support exists if such support is necessary for his continued mental health.