

STATE HOSPITALS: Section 202.863, RSMo, Cum. Supp. 1957, is applicable when a patient is committed to a
COUNTY PATIENTS: state hospital by order of a probate court under the mental illness act. It is not within
PROBATE COURTS: the province of a probate court when said court orders a person committed to a state hospital, under the mental illness act, to determine whether such person is to be admitted as a county patient.

August 12, 1959



Addison M. Duval, M. D.
Director, Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"From time to time there are questions raised by administrators of our state hospitals relative to the interpretation of laws and we want to screen those and should we feel they do warrant your attention, they will be forwarded for your study.

"We have recently had a communication from the St. Joseph State Hospital having to do with the interpretation of the intent of the Law with respect to private and county patients in the state hospitals. The County and Probate Courts of Buchanan County evidently are in disagreement with the state hospital in their efforts to comply with the law as they interpret it.

"To more clearly give you the picture, the following is an excerpt taken from a letter sent to me by Dr. Mullinax, Superintendent of the St. Joseph State Hospital.

'For instance, we are notifying the county courts that certain patients have Social Security benefits payable and are asking the county court to take these people off their county rolls and we will use the Social Security benefits to pay for their care in our hospital. Buchanan County Court

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does not agree as the other county courts do, and they will not allow us to do this. They state that only the Probate Court has the power to say whether or not a patient is to be a county or a pay patient. We feel that this is in variance with our Commitment Law 202.863 Section 3, which reads as follows: If any person is admitted to a state hospital who is unable to pay for care and treatment, the superintendent of the hospital shall notify the county court of the county of residence of the fact and the county court shall hold a hearing on the case within ten days following the notification. If it is determined at the hearing that the person is unable to pay for care and treatment, the county court shall order the hospitalization of the person as a county patient. Appeals from the decision of the county court may be taken in the manner provided in sections 49.230 to 49.250, RSMo.

I am enclosing a letter from Frederick J. Culver, Presiding Judge of Buchanan County, dated May 13, 1959. This letter does not cover all of the points which we have discussed however. Specifically, an opinion is requested for each of the following questions:

1. Does this statute apply when a patient is committed by the Probate Court?
2. Does this statute apply when the Probate Court orders a patient committed as a County patient?
3. When a patient is committed to a state hospital as a County patient by order of the Probate Court, does subsection 3 of section 202.863 require the superintendent of the hospital to notify the County Court that the patient is unable to pay?

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4. Does a Probate Court commitment which specifies that a patient is to be received as a County patient leave the County Court without duty, responsibility, or authority to hold the hearing as provided in subsection 3 of section 202.863?

5. Does a Probate Court commitment which specifies that a patient is to be received as a private patient leave the County Court without duty, responsibility, or authority to hold the hearing as provided in subsection 3 of section 202.863, when the patient on admittance declares he is unable to pay for his care and treatment?

6. If a patient who can pay and who has reached an agreement with the superintendent as to the amount he will pay is later committed by the Probate Court as a County patient, must he be received as a County patient?

7. If the answer to question 6, above, is in the negative, what action should the superintendent take and under what authority does he take such action?

'As soon as we advise the Buchanan County Court that we have a county patient who is profiting from Social Security benefits, the Buchanan County Probate Court immediately appoints a guardian to care for these payments. The other counties have allowed the State Hospital or relatives of the patient to accept these checks and pay for their care at State Hospital. We do not have any objection to the Probate Court appointing a guardian, but our understanding with the Social Security office was that it is not necessary to have a guardian appointed, and they are willing to turn the money paid by Social Security over to the Business Manager of the State Hospital in order

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that the patient will receive the most benefit in the use of his Social Security check.'

"While the foregoing seems to be a local problem, I do believe that a proper interpretation of the intent of the law would help our hospital administrators, should similar situations arise in their particular areas."

It is evident from your letter that you are referring only to persons committed by probate courts under the mental illness act (Section 202.780 through 202.870, MoRS, Cum. Supp. 1957), and it is only to such persons that this opinion will refer. The specific questions which you ask are found upon pages 2 and 3 and are numbered 1 through 7. It is to these questions that we will direct our attention.

Your first question is whether "this statute", by which you certainly refer to Section 202.863, RSMo, Cum. Supp. 1957, applies when a patient is committed by the probate court. We believe that the answer to this question is most definitely in the affirmative.

Your remaining questions are all predicated upon the fact of the probate court ordering a patient committed as a county patient. We do not believe that the probate court has any authority, under the mental illness act, to order a patient committed as a county patient and that, therefore, your questions 2 through 7 are all resolved by this fact, to wit, that the assumption upon which they are predicated is not valid.

Our reason for taking this position will be set forth by us as follows:

Section 202.807, RSMo, Cum. Supp. 1957, sets forth in elaborate detail the proceedings for the involuntary hospitalization of an individual. This section provides for the filing of an application for such hospitalization in the probate court; the giving of a notice by the court of the receipt of such an application to certain persons including the proposed patient. The section goes on to provide for a hearing and the manner in which such hearing shall be held. Numbered paragraph 5 of such section sets forth what may be encompassed in the finding of the probate court upon the completion of such a hearing. Said paragraph reads:

"5. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is mentally ill,

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and is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization, it shall order his hospitalization for an indeterminate period or for temporary observational period not exceeding six months; otherwise it shall dismiss the proceedings. If the order is for a temporary period the court at any time prior to the expiration of such period, on the basis of report by the head of the hospital and such further inquiry as it may deem appropriate, may order indeterminate hospitalization of the patient or dismissal of the proceedings. The order of hospitalization shall state whether the individual shall be detained for an indeterminate or for a temporary period and if for a temporary period, then for how long."

It will be noted that there is nothing in the above paragraph which would authorize the probate judge to enter an order as to whether or not the individual would be hospitalized, assuming that hospitalization was a portion of the court's order, as a county patient.

It will also be noted that there is nothing in the aforesaid section which requires the probate court to inquire into the matter of whether the proposed patient is financially able to pay his own way. Without a rather detailed inquiry into the financial condition of a proposed patient, it would be impossible for a probate judge to reach a decision as to whether or not the patient should be admitted as a county patient. Numbered paragraph 3 of Section 202.807, supra, sets forth the scope of the inquiry in the probate court. That section reads:

"3. The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the court in its discretion may receive the testimony of any other person. The proposed patient shall not be required to be present. At least one of the witnesses at the hearing shall be

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a licensed and reputable physician who has examined the individual within twenty days prior to the hearing. If an order of hospitalization is made, such medical witness shall make out a detailed history of the case, as far as practicable, stating the diagnosis or nature of the mental illness, its duration, former treatment of the patient, and all other particulars relating to the patient and his disease on forms acceptable to the division of mental diseases. Such history shall be attached to the order of hospitalization to be delivered to the hospital. The court in its discretion may order further examination as to the mental condition of the proposed patient and may continue the hearing until the report of such further examination is made to the court."

From the above it would appear to us that nowhere is the probate court given the authority to commit as a county patient. On the contrary, we believe it to be amply plain that this determination is to be made by the county court. Numbered paragraph 3 of Section 202.863, RSMo, Cum. Supp. 1957, reads:

"3. If any person is admitted to a state hospital who is unable to pay for care and treatment, the superintendent of the hospital shall notify the county court of the county of residence of the fact and the county court shall hold a hearing on the case within ten days following the notification. If it is determined at the hearing that the person is unable to pay for care and treatment the county court shall order the hospitalization of the person as a county patient. Appeals from the decision of the county court may be taken in the manner provided in sections 49.230 to 49.250, RSMo."

There is, of course, provision made for the voluntary hospitalization of individuals (Section 202.783); hospitalization on medical certification (Section 202.797); and emergency hospitalization (Section 202.800).

We also note Section 202.220, RSMo 1949, which reads:

"If the probate court of the proper county shall so order, the clerk thereof

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shall transmit to the superintendent a certificate, under his official seal, setting forth that any patient in a state hospital has not estate sufficient to support him therein. Upon the receipt of such certificate by the superintendent, such person shall be a county patient of such county, and shall be supported by such county, as provided by this chapter in the cases of poor patients."

We also note Section 202.240, RSMo 1949, which reads:

"If the probate court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate, under his official seal, setting forth that any county patient in the state hospital from his county has sufficient estate to support and maintain him at the hospital. After the receipt of this certificate, the patient shall be a pay patient; and in such cases, charges shall be made out and paid and a bond shall be required and executed as in all other cases of pay patients; and upon a failure thereof, after reasonable delay, the superintendent shall discharge such patient in the manner as provided in this chapter in case of poor persons."

From the above it would appear that in those instances where persons have been committed under the mental illness act the initial determination as to whether they are to be county patients is to be made by the county court (except when the person has been committed from St. Louis City), but that subsequent determinations as to whether such persons shall be pay or county patients are to be made by the probate court under the provisions of Sections 202.220 and 202.240, supra.

We also note Section 202.813, MoRS, Cum. Supp. 1957, numbered paragraph 1 of which reads:

"1. Whenever an individual is about to be hospitalized under the provisions of sections 202.797, 202.800, 202.803 or 202.807, the county court or the probate

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court if the individual is a resident of the city of St. Louis or a class one county, upon the request of a person having a proper interest in the individual's hospitalization, and if the court finds that the individual is entitled to be hospitalized as a county patient, or that such action is necessary for the individual's physical and mental health, shall arrange for the individual's transportation to the hospital with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. Whenever practicable, the individual to be hospitalized shall be accompanied by one or more of his friends or relatives."

We do not believe that this section, although it may perhaps appear to do so, gives the probate court of a class one county the power of initial determination as to whether a person committed is to be a county patient, but rather that such section merely authorizes the payment of the cost of the individual's transportation to the hospital with suitable medical or nursing attendants and is not authority for holding that the probate court in counties of class one determines what patients are to be county patients for any purpose except transportation. Such a holding would be in conflict with the provisions of Section 202.863, supra.

CONCLUSION

It is the opinion of this department that Section 202.863, RSMo, Cum. Supp. 1957, is applicable when a patient is committed to a state hospital by order of a probate court under the mental illness act. It is the further opinion of this department that it is not within the province of a probate court, when said court orders a person committed to a state hospital, under the mental illness act, to determine whether such person is to be admitted as a county patient.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:gm:bjw