



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 14, 1950

Hon. Moyne L. Kelly
Executive Director
Board for Texas State
Hospitals & Special Schools
Austin, Texas

Opinion No. V-998.

Re: Several questions re-
lative to the proce-
dure to be followed to
discharge patients
from State hospitals.

Dear Sir:

Reference is made to your recent request which reads in part as follows:

"This Board is unable to interpret certain portions of H.B. No.856, Acts of the 51st Legislature. Section 3 of the bill reads as follows:

"'Sec.3. Whenever an inmate of a State Hospital thus committed shall be found by the Superintendent thereof to have recovered to an extent that he is no longer of unsound mind, it shall be the duty of said Superintendent to immediately certify that fact to the Judge of the County Court of the county in which said hospital is located, and file an affidavit asking for the restoration of said inmate, such restoration proceedings to be heard and determined in the same manner as now provided by law. It shall be the duty of said Judge to docket and try such proceedings at the earliest possible time.' (Emphasis supplied.)

"It would appear from the above quoted section that the restoration proceedings would necessarily have to be held in the county in which the hospital is located. However, in Section 4 of H.B. No.856 it is provided:

"'Sec.4. Whenever an inmate of a State Hospital shall have been thus certified by the Superintendent thereof as recovered, it shall also be the duty of said Superintendent to immediately release said inmate, if not already on furlough, from said hospital, in the

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same manner and subject to the same provisions as is provided in Article 31931, Revised Civil Statutes of the State of Texas, 1925, but in no event shall such inmate be discharged from said hospital unless and until his restoration has been adjudged by a court of competent jurisdiction. The right of rearrest and re-confinement to such hospital shall continue to exist as to such inmate while on furlough pending restoration proceedings in the same manner and to the same full extent as is now provided in Article 31931.' (Emphasis supplied.)

"From Section 4 it would appear that the inmate may be discharged from the hospital when his restoration has been adjudged by a court of competent jurisdiction.

"Question No. 1: Is it necessary that inmates of State Hospitals, who have restorations, have the proceedings in the counties in which the hospital is located, regardless of where the patients might be residing? (Furloughed patients may be several hundred miles away from the county in which the hospital is located.)

"Question No. 2: If your answer to Question No. 1 is in the affirmative, would such provision be constitutional in requiring restoration proceedings in only seven (7) counties in the State of Texas, thereby depriving the inmate from having a restoration proceeding in his county of legal residence?

"Since H.B. No. 856 allows discharge only by restoration, it is necessary for the hospitals to carry patients as being furloughed, escaped or transferred to another State or Federal hospital; and since Article 31931 allows furloughs for one year, re-examination at the end of one year, and continuance of furlough for two additional years, the following questions arise:

"Question No. 3: What should be done at the end of three years with patients who are not mentally capable of being restored, but who are well enough not to need hospitalization?

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"Question No. 4: How should a patient be carried on the hospital census when such patient is not returned at the end of the first year of furlough for the required examination?

"Question No. 5: How should a patient be carried on the hospital census if furloughed or escaped and later committed to a State or Federal hospital in another State?"

It was held in Hatton v. State Board of Control, 146 Tex.160, 204 S.W.2d 390 (1947), that it was the duty of the Superintendent of a State Hospital to discharge a patient from the hospital when he had determined that such patient had recovered to the extent that it was no longer necessary that he be held in restraint; and that a patient who had been so discharged from the hospital while on furlough could not be recommitted to the hospital without a jury trial even though his sanity had not been legally restored.

At the time of the above decision there was no mandatory provision in the law directing Superintendents to have a person's sanity judicially restored before being discharged from the hospital. Such was one of the obvious purposes of House Bill 856, Acts 51st Leg., R.S. 1949, ch.435, p.810, and codified as Article 5561b, V.C. S. Such Act provides in part as follows:

"Section 1. The provisions of this Act shall apply to all persons who have been both adjudged of unsound mind and as needing restraint by a jury under the provisions of Title 92, Revised Civil Statutes of the State of Texas, 1925, entitled 'Lunacy-Judicial Proceedings in Cases of,' and committed to a State Hospital in accordance therewith, and not charged with a criminal offense, and to none other.

"Sec. 2. The provisions of this Act are intended to be and shall be both mandatory and exclusive.

"Sec. 3. Whenever an inmate of a State Hospital thus committed shall be found by the Superintendent thereof to have recovered to an extent that he is no longer of unsound

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mind, it shall be the duty of said Superintendent to immediately certify that fact to the Judge of the County Court of the county in which said hospital is located, and file an affidavit asking for the restoration of said inmate, such restoration proceedings to be heard and determined in the same manner as now provided by law. It shall be the duty of said Judge to docket and try such proceedings at the earliest possible time.

That it was the intent of the Legislature in enacting House Bill 856 to provide a mandatory and exclusive method for Superintendents of State Hospitals to bring about a judicial restoration of a person's sanity before discharge from the hospital is substantiated by the emergency clause of the Act. It is there stated:

"The present anomalous and unsatisfactory condition of the law in this regard, wherein a recovered lunatic can be discharged by the Superintendent of a State hospital without the necessity for a restoration proceeding, but cannot be returned to said hospital without another adjudication of insanity, yet remains under the legal disabilities of the original adjudication until restored in spite of his discharge, has resulted in great loss and confusion to many innocent people,

In view of the foregoing it is our opinion that one of the primary objects in enacting House Bill 856 was to require that Superintendents of State Hospitals to have the sanity of a patient judicially restored before the patient can be discharged from the hospital. An exclusive method is provided by the Act for the judicial restoration of sanity to an inmate of a State Hospital who is "found by the Superintendent thereof to have recovered to an extent that he is no longer of unsound mind." Section 3 of the Act requires the Superintendent to certify such fact to the Judge of the County Court of the county in which the hospital is located, and further provides that such Judge shall docket and try such restoration proceedings at the earliest possible time. Insofar as the judicial restoration of sanity to a patient through the initiative of the Superintendent is concerned,

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Section 3 provides the exclusive court and method, and you are so advised.

On the other hand, Section 4 of House Bill 856 clearly contemplates a situation where a mental patient has been granted a temporary leave or furlough from the State Hospital under the provisions of Article 31931, V.C.S. It is provided in Section 4 as follows:

"Whenever an inmate of a State Hospital shall have been thus certified by the Superintendent thereof as recovered, it shall also be the duty of said Superintendent to immediately release said inmate, if not already on furlough, from said hospital, in the same manner and subject to the same provisions as is provided in Article 31931, Revised Civil Statutes of the State of Texas, 1925, but in no event shall such inmate be discharged from said hospital unless and until his restoration has been adjudged by a court of competent jurisdiction. The right of rearrest and reconfinement to such hospital shall continue to exist as to such inmates while on furlough pending restoration proceedings in the same manner and to the same full extent as is now provided for in Article 31931."

Section 4 of Article 5561a, V.C.S., provides, in part:

"Whenever one or more adult citizens of this State shall file an affidavit with the County Judge of the county where any one of the affiants resides alleging under oath that there is located within said county, or confined within said county, a person who has theretofore been declared to be of unsound mind, or an habitual drunkard, and that in the opinion of affiants such person has been restored to his right mind, or to sober habits, and that there is no criminal charge pending against such person, the County Judge shall forthwith, either in termtime or in vacation, set a day for a hearing to determine the sanity, or sobriety, of such person . . ."

Thus it is to be observed that if a patient is

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on furlough under the provisions of Article 31931, it is possible to have a judicial restoration of sanity under the provisions of Article 5561a. In such a case the judicial restoration is instituted by "one or more adult citizens of this State" by the filing of an "affidavit with the County Judge of the county where any one of the affiants resides alleging under oath that there is located within said county" a person previously declared to be of unsound mind and asking for a judicial restoration of sanity. In such a case the sanity restoration proceeding has not been instituted by the Superintendent of the hospital, and therefore, Section 3 of House Bill 856 is not applicable. However, in all cases, whether the sanity restoration proceeding is instituted by the Superintendent or some private citizen, the Superintendent of the hospital is not authorized to discharge the patient until the court where such proceeding is instituted has judicially determined that such person's sanity has been restored.

The above answer to your first question makes it unnecessary to answer your second question.

We believe it was the further purpose of House Bill 856 to obviate the necessity of another sanity hearing before a furloughed patient, whose sanity has not been legally restored, may be returned to the State Hospital.

Article 31931, V.C.S., provides:

"The superintendent of any institution, after the examination as hereinafter provided, may permit any inmate thereof temporarily to leave such institution in charge of his guardian, relatives, friends, or by himself, for a period not exceeding twelve months, and may receive him when returned by any such guardian, relative, friend, or upon his own application, within such period, without any further order of commitment; but no patient, who has been charged with or convicted of some offense and been adjudged insane in accordance with the provisions of the code of criminal procedure, shall be permitted to temporarily leave such institution under any circumstances. The superintendent may require as a condition of such leave of absence, that the person in whose charge the patient is permitted to leave the institution shall make reports to him of

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the patient's condition. Any such superintendent, guardian, relative or friend may terminate such leave of absence at any time and authorize the arrest and return of the patient. Any peace officer of this state shall cause such patient to be arrested and returned upon the request of any such superintendent, guardian, relative or friend. Any patient, except such as are charged with or convicted of some offense, who has been adjudged insane in accordance with the provisions of the code of criminal procedure, who has returned to the institution at the expiration of twelve months may be granted an additional leave of not to exceed two years, by the superintendent, or upon his recommendation."

Since House Bill 856, which was passed subsequent to Article 31931, provides that no patient may be discharged from such hospital "until his restoration has been adjudged by a court of competent jurisdiction" it is our opinion that a patient who is not mentally capable of being restored, but who is in such condition as to no longer need hospitalization, may be furloughed, but he may not be discharged at the end of three years without restoration of sanity.

Your fourth question presents a practical problem. If a patient is not returned at the end of the first year furlough for an examination, then the Superintendent granting such furlough should contact the person having custody of the patient and determine whether he should be returned to the hospital or granted an additional furlough. If such patient cannot be located, and he is considered as an escapee by the Superintendent, he should be carried on the Census Roll as such. If, on the other hand, his furlough is extended, then he should be listed as being furloughed.

In answer to your fifth question you are advised that if a patient is granted a furlough or escapes and is later committed to another State or Federal Hospital, such patient should be carried on the Hospital Census as furloughed or as an escapee as the case may be with the notation made of the patient's commitment to another State or Federal Hospital.

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SUMMARY

A sanity restoration proceeding with reference to an inmate of a State Hospital who is on furlough may be instituted in the county where the patient is located rather than the county in which the hospital is located. Arts.3193i and 5561a, V.C.S.

A patient in such mental condition as to prevent a judicial restoration of sanity, yet recovered to the extent that hospitalization is no longer necessary, may be furloughed by the Superintendent, but in no event may he be discharged at the end of three years without a restoration of sanity by a court of competent jurisdictions. Art. 5561b, V.C.S.

If a patient is not returned at the end of the first year furlough for an examination, the Superintendent granting such furlough should contact the person having custody of the patient and determine whether he should be returned to the hospital or granted an additional furlough. If such patient cannot be located and is considered as an escapee by the Superintendent, he should be carried on the census roll of the hospital as such. On the other hand, if his furlough is extended, he should be listed on the roll as being furloughed.

If a patient is granted a furlough or escapes and is later committed to another State or Federal Hospital, such patient should be carried on the census roll as "furloughed" or as an "escapee" as the case may be, with the notation made of the comital to another State or Federal Hospital.

Yours very truly,

APPROVED:

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