House Judiciary Committee Meeting
Friday, February 26, 1965

The House Judiciary Committee met Friday, February 26, 1965, in Room 523 at 8:30 A.M. with Chairman Jack R. Euler presiding. Fourteen members were present. Members Amrein, Barnhill, Davis, Griffith, Hill, Howard and Van Cleave were absent.

Chairman Euler called the meeting to order. He explained that the purpose of the hearing was to enable the members of the committee to gain some insight in regard to the background of the proposed acts. The members of the committee were presented with lists of their objections and suggestions which were made while the committee considered the proposed acts in general. They also received a "statement of Kansas Psychiatric Society Regarding the Proposed Act For Obtaining Care or Treatment for Mentally Ill Persons" and a proposed Revision of Section 31, Disclosure of Records, copies of which are attached.

Chairman Euler then introduced those present for the hearing concerning the proposed mental illness acts, An Act of Obtaining "Care or Treatment" for a "Mentally Ill Person" and the Act for Obtaining a "Guardian" or "Conservator:" J. V Beyer, Jr. Hutchinson, Christian Science; Charles V. Hamm, Attorney, State Department of Social Welfare; R. A. Haines, M. D., Director, Institutional Management Social Welfare; Joseph Satten, M. D., Menninger Clinic, representing the Kansas Psychiatric Society; Saul Siegel, Topeka State Hospital, Representing the Kansas Psychological Association; Ted Lindahl, Reno County, Dan Hopson, Jr., Kansas Judicial Council and Marion Craney, Executive Secretary, Kansas Association for Mental Health.

Dr. Satten was the first speaker. He stated that the Kansas Psychiatric Society finds the proposed acts a constructive step in the handling of the mentally ill. He said that the nature of their concern was in regard to section 31, disclosure of records. He went on to state that this section seems to pose some particular hazzards in facilitating treatment and encouraging voluntary seeking of treatment. These hazzards should be removed and provision be made for selective disclosure of records. Their second objection was that the act as presently written allows the head of the hospital to release information without the consent of the patient.

They think the consent of the patient should be obtained in all cases of releasing information. This is a recognition of the patient's capacity to govern himself. Their third objection is that the act allows any court of record to obtain the hospital records. They want a judicial determination that failure to disclose the records would be contrary to the public interest. They don't want to make psychiatric records more available to the court than hospital records. Their fourth objection was the provision that allows the attorney to have access to the records if the patient doesn't wish this. They felt that the court should determine this if the patient and his attorney are quarreling. In general; however, they felt the act is a big step forward and wish to support the act.

Mr. Coldsnow stated that the attorney might need full disclosure in order to help him fully. Dr. Satten stated that disclosing information against the patient's wishes is a delicate problem. There was a great deal of discussion in this regard. Mr. Coldsnow asked if there is any difference in the attorney-client relationship and the patient-doctor relationship. Dr. Satten stated that it is a question of the attorney having this information over the objection of the patient. If the patient objects, there should be a way for somebody to decide if he should have to have the information over and above the objection of the patient. Mr. Turner asked just how they would determine whether the records are important if they don't know what is in the record. Who will read them and under what circumstances? Mr. Woodworth asked if this is legal or relating to the patient's welfare. Dr. Satten stated that this opens it too wide. Mr. Tillotson agreed with Mr. Coldsnow in regard to the physician and attorney being in the same position. They both represent the same person and all information will be of assistance.

Mr. Turner then made reference to the Nebraska case where the boy killed so many people and refused to be considered mentally ill. He wanted to know exactly how this determination will be made.

Dr. Satten pointed out that psychiatry depends upon the secrets of people being revealed to their doctor. It would greatly impede the care and treatment of patients if the information is permitted to get out. If we wish to encourage voluntary hospitalization, this can not be done. When the patient and the attorney are in conflict, this is a question for judicial determination. Dr. Satten stated that the Kansas Psychiatric Society also objects to the scholarly investigation unless the names of the patients are protected. There was a great deal of additional discussion in this regard.

The next speaker was Saul Siegel, representing the Kansas Psychological Association. In general, the association is very pleased with the effort. He then read subsection 9, section 1, and stated that a provision should be made to include clinical psychologists and social workers, or at least not exclude them. He then went on to explain how they are involved in the care and treatment of mentally ill patients.

Chairman Euler asked for any questions. There were none.

Mr. J. V. Beyer, Jr., Christian Science representative, gave reference to the proposal amendment presented to the members of the committee at their meeting Wednesday afternoon, February 24, 1965. He made reference to B of section 2, definitions; a mentally ill person is one who refuses to seek care or treatment. He also gave reference to section 13, paragraph 7, the proposed patient has refused to submit to an examination by a physician. He stated that under this act, a Christian Scientist may be reported as mentally ill. He then read the proposed amendment which is to be included as part of this act. A copy of this amendment is attached to the minutes of Wednesday afternoon, February 24, 1965.

Chairman Euler then made reference to section 2, B of subsection 1, and asked if it would meet with their approval if they incorporate the Christian Scientist's proposed amendment in this subsection.

Mr. Gray pointed out that they may wish to include Christian Scientist practioners in the section concerning rights of persons to visit.

Dr. Haines pointed out that the big thing this bill does is to seperate hospitalization from competency. Under this act, you could order them for treatment and would not have them committed. They want to encourage the voluntary basis so there will be early treatment.

Mr. Rogers asked if he thinks this act is advantageous over the ninety day reference. Dr. Haines said that it very definitely is and pointed out that under the present law, the patient looses his civil rights.

Mr. Sargent made reference to section 3 and asked if possibly this opens it up to anyone who calls himself a "mental health clinic." Dr. Haines said that possibly it should be reworded. He pointed out that there is a licensing law for these clinics and went on to enumerate some of the requirements under this law. There was som discussion by the members of the committee in this regard.

Dr. Haines pointed out that presently the only place the court can go is to a state hospital or the V A hospital. This act provides other means of seeking care or treatment.

Mr. Turner made reference to section 3 and asked who the responsible individual is and who has the authority to detain.

Professor Hopson stated that this act would permit the court to move them.

Mr. Coldsnow made reference to licensed nursing homes. He asked if it isn't actually the physical plant that is licensed and not a responsible person. Mr. Hamm stated that the Board of Health licenses the nursing home and it requires more than a clean physical plant, but also considers the degree of care they give. There was a great deal of discussion by the members of the committee in this regard. Mr. Hamm suggested that the committee might want to broaden this definition.

Chairman Euler then made reference to the committee's question in regard to subsection 12 of section 2. What does this consent amount to? The committee thought this would include surgical proceedings. Dr. Haines said that this would include surgical proceedings, but that the hospital would

contact the families first unless they could not be contacted. Chairman Euler questioned the necessity of the provision being this broad. Mr. Hamm explained that this includes physical examination, distribution of vitamins, etc. Mr. Turner pointed out that this refers to "patient" and "patient" includes voluntary, etc. He went on to state that if you are going to do this, you should spell this out and limit it to those not able to give intelligent consent, limiting people who are dangerous to themselves or others. Dr. Haines and Mr. Hamm concurred in the statement that this would be fine just as long as you don't write the law so that they can't give a physical examination, vitamins, etc.

The members of the committee asked who would included in "physicians" in subsection 10 of section 2. Mr. Hamm stated that this excludes chiropractors and osteopaths. It was the general feeling of the committee that this law becomes expansive of the Healing Arts Act, and that this subsection shoud be tightened up.

There was a great deal of discussion by the members of the committee in regard to the hours of 9:00 A. M. to 5:00 P. m. under section 4. The committee felt that this should be changed to "reasonable time." Mr. Hamm stated that he would not object to the hours of 9:00 A.M. to 5:00 P.M. being taken out.

Mr. Hamm stated that these acts are a great improvement over what we now have as our laws.

It was suggested that the voluntary admission should refer only to psychiatric hospitals.

Dr. Satten stated that these proposed bills are a very big step forward to the ones we are struggling with now. He went on to say that he would like to see a time when a voluntary patient is entirely voluntary and that perhaps in spots we haven t moved far enough in these acts. There was a great deal of discussion and examples cited in this regard.

The committee then questioned why the age of 16 was chosen. Professor Hopson stated that it was arbitrarily chosen. The Judicial Council's committee didn't think the parents should be able to stop them if they felt they needed help.

Mr. Woodworth suggested that when a patient comes into a hospital as a voluntary patient, he comes into it for a certain period of time. Dr. Satten said that in practice, the private and public hospitals don't hold a patient unless they feel this patient is dangerous to himself or others. It was suggested that they state the patient may be detained for a period of ten days, thus leaving the ambiguity out.

Reference was made to the committee's question in regard to D of section 14. Professor Hopson stated that this wasn't intended to limit the counsel, but merely to make certain that the counsel see the patient at least once.

Dr. Haines stated that they share the concern of releasing medical records. The committee has been presented a draft and the explanation of a revision of this section, a copy of which is attached.

Chairman Euler asked if there were any further questions of the doctors appearing before the committee. There were none.

Justice Alfred G. Schroeder was the next speaker. He gave the background concerning the acts. He stated that the Judicial Council's committee on these acts started out with three guides: 1. Any act drafted should be court orientated. 2. Due process should be accorded any person whose rights have been affected. 3. A person should be represented by counsel if his legal rights are affected. This is the product of a great deal of thought and many redrafts of all sections.

Reference was made to the committee's question in regard to subsection 13 of section 2. Professor Hopson stated that this was merely to build in protection. The committee didn't think it was fair to the probate judges to be on call twenty-four hours a day. This is defined the same as under 59-211 and the other protection is that the local hospital will keep him.

The meeting adjourned at 11:15 A. M. The committee will resume their consideration of the mental health acts upon announcement.

Respectfully submitted,
Jack R. Euler
Chairman

Minutes approved: Jack R. Euler

MEMORANDUM*

TO: Jack R. Euler, Chairman of the House Judiciary Committee

SUBJECT: Questions concerning the Act for Obtaining Care or Treatment for a Mentally Ill Person (Raised in Committee)

Section 2.

(1) (B) The committee felt this to be vague.

(3) Does this mean only "out patient"?

(4) Does this mean "in patient"?

(9) Does this include out of state hospitals?
Can the court order out of state commitment?
Does this mean only licensed nursing homes?

(10) Does this include chiropracters and osteopaths?

(12) By this section does the patient give blanket consent for any type of medical treatment?

(13) Should "available" mean any reasonable time?

Section 3.

Should not the head of the hospital be made specifically responsible for detainment rather than the hospital in general?

Section 4.

Who may be the "designee" of a "head of the hospital"?

Is an informal patient really an involuntary patient if he can't leave after 5 p.m.?

Why was age 16 chosen?

Should "upon his own application" be inserted after "older" and before "May" in line 1.

Should the hours of 9 a.m. to 5 p.m. be changed to "any reasonable time"?

Section 5.

Should a 16 year-old be able to consent to surgery?

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* Prepared by Barry Bennington

Section 7.

Why can an informal patient leave at will when a voluntary patient can't? What exactly is the difference between an informal patient and a voluntary patient?

What is the reason for the 10 day period and is it perhaps too long?

Section 8.

Is this too much authority to give "any peace officer"?

Section 9.

In view of section 8 shouldn't the probate court be available 7 days a week?

Section 10.

Who is to be notified if the guardian, spouse, or next of kin made the application?

Section 11.

If the probate court isn't available then why shouldn't the district court work?

Section 12.

Perhaps the patient should be given a chance to go voluntarily first.

Section 13.

Some doubt about (6); the committee wants to be sure the names of the complanents appear on the application.

Section 14.

(B) The committee wants to insure the fact that the patient may appear if he so wishes.

(C) The committee feels that the appointment of counsel for the indigent should be made from a list supplied to the judge by the local Bar Association.

Section 14. (Cont'd)

(D) The committee feels the attorney's right to visit the patient should be insured and that all hospital records should be made available to the attorney.

(F) Delete "physician" and allow only psychiatric hospital or psychiatrist.

In addition the committee is concerned about the fact that the examiner's report is likely to be submitted only 3 days before the hearing and an application for a jury hearing must be made 2 days prior to the hearing. This leaves only 1 day for the attorney to investigate and decide on a jury hearing or not.

Section 15.

The report should list the name of <u>all</u> persons who participate in the evaluation.

(C) At the end of this section add the words "or his counsel."

(C) Also the patient should have the absolute right to a continuance.

Section 16.

(C) The committee feels this section may be constued to limit the attorney to one consultation with the patient and this should not be the case.

Section 17.

In the 6th line after the word "hearing" and before the comma add the words "or any continuance thereof." Suggested alternative to this wording was "or prior to the time of the actual hearing."

The attorney for the patient should be able to request a continuance in addition to the "proposed patient."

The committee felt that if the evaluator appeared to testify then there would be no need to have the written report introduced as evidence.

Why should the county attorney represent the applicant? (Last paragraph, page 2, Section 17)

Section 20.

What is the status of a person authorized to transport a patient with regard to the liability of that person?

Section 21.

Is 15 days too long?

Section 22.

The committee felt, that venue shouldn't be changed over the objection of the patient. A (1) and B (2)). Acceptable provided patient or his counsel does not object to such transfer.

Section 23.

At the end of the second paragraph after the word "thereafter" insert "unless the court having jurisdiction shall order otherwise."

Section 24.

Shouldn't the court make the determination concerning discharge instead of the head of the hospital (Paragraph 2)?

Section 25.

If Section 24 is amended as above, then correlative change is needed here.

Section 26.

Should a peace officer be allowed to pick up voluntary or informal patient and return him to the hospital? Here the committee feels "patient" should refer only to someone whose rights have been adjudicated away.

Section 29.

Why doesn't patient have absolute right to communicate with family? In the 10th line, after the word "the" and before the word "right" insert the word "absolute."

Section 30.

What rules and regulations may be made by the head of the hospital to abridge the rights of the patient? Does the privilege of having hospital records kept confidential die when the patient dies?

Section 31.

Delete last sentence of 2 (A).

Section 32.

In line 6, use "false" instead of "fake."
Should add the last sentence of the first draft.

Section 34.

Who may the costs be taxed to? The applicant should bear the costs if he unjustly or unduly files a charge. Should provide for an appeal from the state board of social welfare.

Section 35.

Should children be bound by law to support patient parent?

Section 36.

What about presently incompetent person who has no guardian?

MEMORANDUM

TO: Jack R. Euler, Chairman of the House Judiciary Committee

FROM: Barry A. Bennington February 25, 1965

SUBJECT: Questions concerning the Act for Obtaining a "Guardian" or "Conservator" or Both. (Raised in Committee)

Section 2 (1) Could there be a conflict between the definition of an "incapacitated person" and the definition of a "mentally ill person"?

(3) Are there any problems raised here if the father of an illegitimate minor has been recognized by adjudication?

Section 3 At the end of line 3 does the word "his" refer to both sexes? Should a natural guardian be allowed to dispose of the estate of a minor without the consent of the probate court? Should the $2,000 figure be reduced to $1,000?

Section 4 In line 2, change the word "nominate" to "designate".

Section 7 Juxtapose "neither is".

Section 9 (3) Should this provision for notice be broader? Is a written statement by a physician necessary (line 1, page 3)?

(8) Should these be two separate actions (page 2)? The two sets of numbered paragraphs beginning on page 1 and page 3 should be numbered differently.

Section 10 (4) Same objection as 14 (D) in the other bill; the attorney's right to visit the proposed ward or conservatee more than once if necessary should be protected.

(6) Is mandatory submission for mental evaluation making the proposed conservatee "testify against himself"?

Section 11 (A)(1) What does the likelihood of the proposed conservatee injurying himself have to do with his competence to handle property and income?

Section 11 (Cont'd.)

(2) Should it be spelled out that an attorney for the proposed ward, conservatee, or applicant can also get a continuance?

(B)(5) Where may rural counties go for this testing service?

Section 12 (C) Satisfactory for initial consultation but does this limit the number of consultations?

Section 13 As in Section 14 of the other bill the committee is here concerned with the fact that the examiner's report is likely to be submitted only 3 days before the hearing and as an application for a jury hearing must be made 2 days prior to the hearing, this leaves only 1 day for the attorneys to investigate and decide on a jury hearing or not.

Section 14 Should it be spelled out that a guardian or conservato should be a natural person rather than a corporation and also a resident?

Section 15 The committee felt this section could be combined with Section 3. Are opportunities limited exclusively to banks and savings and loans? If so, does the last sentence of the section conflict with the rest of the section?

Section 16 (b) Committee suggests that the change in venue be only with the consent of the ward of conservatee.

Section 17 Does the notice referred to herein absolutely include the ward or conservatee and his or her attorney? Perhaps it should be spelled out to whom the noticeis to go.

Section 18 Does a non-resident guardian remain under the jurisdiction of the Kansas court? Can the court transfer the residence of the ward or conservatee? Is there a residence requirement for the guardian or conservator? Can the court transfer jurisdiction to another state?

Section 23 Delete "except the homestead" of line 5.

Section 27 Either delete the proviso beginning on line 13 or add the words "unless the court having jurisdiction shall order otherwise" after the word "thereafter" at the end of line 16. See also Section 23 of the other act.

Section 28 (C) (3) At the end of this sub-section add the words "and that a conservator has been appointed pursuant to Section 13 of this act."

Section 32 In line 13 after the word "conservatee" and before the word "to" insert the words "or to applicant."

Other Comments: Why is there no penalty for making a false application in this act as thereis in Section 32 of the other act.?

February 2[illegible], 1965

After careful study, it was the considered opinion of the Society that the provisions of the Act represent a constructive forward step in the therapeutic management of citizens suffering from mental illness, while at the same time adequately safeguarding the rights and dignities of such citizens. The Society, however, is concerned about Section 31 of the proposed Act, entitled "Disclosure of Records," and it wishes to suggest some changes in the wording of the Section which should strengthen the over-all purpose of the Act. The present wording seems to add additional hazards for patients hospitalized under this Act, in contrast to patients hospitalized in a general hospital, and the Society wishes to suggest that these hazards be removed. In addition, if the intent of the Act is to encourage voluntary hospitalization, one might consider extra protections for the psychiatric patient. In any event, it seems that the proposed Section on Disclosure of Records goes beyond what is necessary for proceedings under the Act, and the Society has the following general suggestions to make. Attached to this memorandum are also the detailed suggestions.

1. The Act as presently written states that the medical records of any patient shall be privileged except under certain circumstances. We would like to suggest that the Act state that the records are confidential and that certain information from the records may be disclosed under certain specific circumstances. Since there is a great deal of confidential information in a psychiatric record that comes from many sources beside the patient, the purpose of this change is to protect the patient's family, friends, and others from whom the confidential information has been obtained, and to make disclosure selective and related to the questions at hand, rather than to make automatically available to every inquirer all of the patient's private life, dreams, fantasies, and disturbed thinking.

2. The Act as presently written states that the head of the hospital may, at his sole discretion, release information about the patient. We feel that this gives too much discretion to the head of the hospital, and we see no reason why the patient's consent should not first be obtained for any release of information. Also, while we can see the necessity for certain research and administrative personnel to have access to patients' records, we feel this can be done in such a way as to protect the patients' confidentiality.

3. The present Act allows any court of record to have access to information about the patient. In general, we are opposed to the automatic disclosure of all confidential information, and

we would like to suggest that this portion of the bill be eliminated, or at least amended, to require a judicial determination in each instance that failure to disclose the confidential information would be contrary to the public interest. The judge would be in a position to weigh the contrary needs of the individual and the community and prevent any unnecessary disclosure of confidential information. However, we do not see why the proposed Hospitalization Act should make hospital records more available to the courts than provided for by laws currently on the books, and we would like to suggest that, if this section is retained, this availability of information be limited to proceedings under this Act.

4. The Act as presently written states that, in proceedings under it, any attorney representing the patient may have access to the records. In one sense, this section is redundant, since the attorney can have access to information with the patient's consent. In another sense, this section is objectionable, since it allows the attorney to have access to information about the patient against the patient's wishes. If there is some conflict between the patient and the attorney, we question that the patient's wishes should be over-ridden.

Revision of Section 31

DISCLOSURE OF RECORDS

The probate court, hospital or medical records of any "patient" or former "patient" that are in the possession of any probate court, "psychiatric hospital," "general hospital" or "other facility for 'care or treatment'" shall be [privileged] confidential and shall not be disclosed except as [:

(1)] otherwise specifically provided in this act[; or

(2) under any of the following conditions:]. Provided, however, that certain information from such records may be disclosed under the following conditions:

COMMENT:

1. The term "patient is defined in Sec. 2(2) to "mean a person who is an 'informal patient,' a 'voluntary patient,' or an 'involuntary patient.'" It is felt that since the language above prohibits disclosure, it should be applicable to each of these classes of patients. The term "patient" will be qualified at a later point in the draft dealing with disclosure of information.

2. There are two reasons for substituting the term "confidential" for the term "privileged": (a) the term "confidential" is more appropriate if the purpose of the section is not only to protect the patient but also to protect confidential information in the records; and (b) avoidance of the term "privileged" reduces the risk that either common law or statutory limitations on "privilege" (e.g., waiver) will be read into the statute.

3. The term "specifically" has been inserted to avoid the possibility that a duty to disclose will be read into some extraneous section of the statute.

4. The phrase "certain information from such records" has been used in order to make implicit in the section the concept that where disclosure is permitted or required, it is to be a selective disclosure; that in no event is there any necessity to make a patient's entire file available to an inquirer.

5. Discretionary language ("may") has been substituted for the present mandatory language.

(A) Upon the consent, in writing, of the "patient" or former "patient," or if he be under sixteen (16) years of age, by his parent, or if he has a "guardian," by his "guardian." However, the "head of the hospital" or the head of the "other facility for 'care or treatment'" who has the records, or other appropriate official of such "hospital" or "other facility for 'care or treatment'" acting in his stead may refuse to disclose information from such records if he [shall have stated] states, in writing, that such disclosure [will] may be injurious to the welfare of the "patient" or former "patient."

COMMENT:

1. Only the "head" may make the decision to refuse to disclose information on request of a patient under the present wording. In the event that the "head" is not available to make such a decision, it seems desirable that there be provision for someone else to make it. The phrase "other appropriate official" is vague enough to include almost anybody. If necessary, more restrictive wording, such as: "or his designate," "or the treating physician of such 'patient,'" "or other lawful custodian of such records," etc., might be used.

2. The phrase "information from" has been added for the reason noted in the first set of comments above. Perhaps in this instance, however, the present wording is preferable. The suggested change might be construed to require a justification for refusal concerning each item in the records.

3. The phrase "shall have stated" in the present wording suggests the possibility that unless such a statement has been entered in the records prior to the request for a disclosure, the request must be granted. Therefore, the word "states" is substituted.

4. The word "may" has been substituted for "will" for obvious reasons.

(B) Upon the sole consent of the "head of the hospital" or the head of the "other facility for 'care or treatment'" who has the records after a statement, in writing, by such head that such disclosure is necessary for the medical "care or treatment" of the "patient" or former "patient." However, such head may make [such] disclosure of information to [the] a "patient" [or former "patient,"] or to his next of kin[, any concerned state agency, state or national accreditation agency, or scholarly investigator without making such determination.] as to the current medical condition of such "patient."

COMMENT:

1. The term "care or treatment" is defined in Sec. 2(12) as meaning "such necessary services as are in the best interests of the physical and mental health of the 'patient' and rendered by or under the supervision of a 'physician.'" The term "medical" has been inserted before this phrase -- perhaps in an excess of caution -- to avoid the possibility that "care and treatment" might be interpreted to include a correctional or a wholly custodial purpose.

2. The phrase "of information" is again designed to further the purpose of making selective rather than complete disclosure.

3. The phrase "or former 'patient'" has been deleted, since the information to be disclosed will be limited to current medical condition.

4. The phrase "current medical condition" is taken from Sec. 23(b) of the Draft Act.

5. The categories of inquirers deleted from this sub section are dealt with in the new sub section as follows.

[(C)] (D) [Upon the order of any] A court of record may direct disclosure of information pertaining to an "involuntary patient" or "proposed patient," after a determination by the court issuing the order that such [records are] information is necessary for the conduct of proceedings before it and [are otherwise admissable in evidence.] that failure to make such disclosure would be contrary to the public interest.

COMMENT: 1. The term "information" has again been used to require that the information sought be specifically identified by the court, and to avoid the blanket ordering of production of "all the records."

2. As indicated in an earlier comment, the term "patient" includes voluntary as well as involuntary patients. The revised language will limit the power of subpoena to involuntary patients and persons concerning whom an application for involuntary hospitalization has been filed. The Committee Notes to Sec. 5 contain the statement that: "The basic philosophy is changed to make admission to a 'psychiatric hospital' as similar to admission to a 'general hospital' as possible. The hope is to encourage voluntary admission." (Emphasis added). Clearly the point can be made without difficulty that to permit the unfettered delving into the hospital records of voluntary patients will effectively discourage voluntary admission.

3. The requirement in the present language that the court make a finding that the record sought is "otherwise admissable in evidence" is ambiguous and perhaps contradictory. A court could not rule on admissability of evidence which it has not seen; and even if the court were aware of all of the information in the records it could not determine their relevancy and materiality before the issues are framed at trial, and before any objections have been interposed.

4. The phrase "that failure to make such disclosure would be contrary to the public interest" comes from Sec. 23(3) of the Draft Act. It forces the judge to weigh the issues involved rather than automatically order disclosure.

5. Even with the suggested changes, the provision is still dangerous in that it could apply to any proceeding (including a minor criminal charge against the patient). Addition of the phrase "in proceedings under this act" would help greatly.

[(D)] (E) In proceedings under this act, upon the [oral or] written request of any attorney representing [the] any "involuntary patient" [, former] or "proposed patient[,]." [or applicant.]

COMMENT: 1. It would seem that the hospital should have a written request to place in the patient's file.

2. Limitation to "involuntary" and "proposed patients" further restricts the duty to disclose.

3. The term "applicant" is not defined. Presumably it means the petitioner in a proceedings under the act. If so, however, there would seem to be no good reason why his attorney should have unrestricted access to the file of the person concerning whom a petition has been filed. If the latter consents, disclosure may be made under sub-section (A); and the probate court before which the petition is pending may subpoena pertinent records under sub-section (D).

4. The most desirable alternative would, of course, be to delete sub-section (E) in its entirety. Again, it would seem that objectives of the sub-section can be fully served by the disclosure provisions of the preceding sub-sections.

Any person wilfully violating this section shall be guilty of a misdemeanor and subject to a fine of not more than five hundred dollars ($500) and/or imprisonment for not more than six (6) months.

COMMENT: No change.

Dr Paige Dr — Hutchinson, Christian Science

Charles V. Hamm atty - State Dept of Social Welfare

R. A. Hames, M.D. DIRECTOR, INST. MGMT. " "

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