COMMENTS

HOSPITALIZATION OF THE MENTALLY ILL

The problem of hospitalization of persons suffering from a mental illness has increased in Georgia, as it has in the rest of the nation, until today approximately 11,000[1] patients are being treated at the Milledgeville State Hospital. The General Assembly of Georgia, realizing a need for revision of the present laws affecting admission to and discharge from the state hospital, appointed a committee to study the present laws and to recommend any changes they deem desirable at the next regular session of the General Assembly.[2] The purpose of this comment is to discuss the present laws of Georgia regarding hospitalization of mentally ill persons, comparable legislation in other jurisdictions, and possible means of improving the local laws. The scope of this article will not permit the treatment of the economic factors involved; therefore, no attempt will be made to discuss the problem of financing the hospitalization.

History

Although mental illness itself is ancient, formal hospitalization and treatment are comparatively new. A little more than one hundred years ago the only mentally ill persons hospitalized were those classified as "furiously mad." The institutions were almost wholly custodial and practically no treatment of any kind was given. In fact many of the confinements were in poorhouses and jails rather than in mental institutions. The early law concerned itself with the administration of the estate of a mentally ill person who owned property, leaving care and custody to be handled privately. The indigent insane person, however, was not distinguished from other paupers.

Toward the middle of the nineteenth century, because of the medical advances made in this field, a commitment to an institution came to be recognized as proper for a mentally ill person even though he was not dangerous. People had realized that mental disease was curable. At that time it was a very informal matter to have a person committed to a mental institution, much as admission to a general hospital is gained

1. Information secured by special committee appointed and acting under House Resolution 132. Ga. Laws 1955, p. 404.
2. Information secured by special committee appointed and acting under House Resolution 132. Ga. Laws 1955, p. 404.

today. It was assumed that the family had acted in the patient's interest by committing him.

In 1861, one Mrs. Packard was committed to an Illinois asylum by her husband under a law then in effect which permitted a husband to confine his wife in a mental hospital if he thought her deranged. Mrs. Packard was released on a writ of habeas corpus some three years later and immediately began to campaign on the theory that not only she, but many others, had been committed and detained though not insane. Although it is doubtful that Mrs. Packard was completely sane when released, there is no doubt that her vigorous work culminated in the requirement in many jurisdictions of a jury trial prior to commitment.

This so called "reform" proved to be much worse than the prior system. Not only were more persons wrongly committed by the juries, but the similarity to a criminal trial of the determination of sanity by a jury was very detrimental to the patient's health. Today in only one state, Texas,[3] is there a mandatory requirement of a jury trial; however in many jurisdictions it is optional.[4] A commission of one type or another has been substituted for the jury; however in most states the procedure for involuntary commitment is still a formal judicial proceeding.

The problem of commitment involves two aspects. On the legal side, a person is being deprived of his liberty and it must be ascertained that his rights are protected. On the medical side, the patient needs to be hospitalized and treated as soon as possible. His condition requires that he be protected from the traumatic effects of a judicial hearing, with formal notice, witnesses, etc. The aim of any legislation should be to insure the protection of the patient's health and at the same time to afford the individual every protection against possible abuses of the commitment procedure.

A Summary of Jurisdiction and Procedure in Georgia

Lunacy, insanity and non compos mentis as used in Georgia statutory law mean of unsound mind.[5] Throughout the statutes, as they have been codified, the above terms are used. Commitment of mentally ill people to the state hospital at Milledgeville is generally included in the code sections that provide for the appointing of a guardian for incompetents. We say generally, because there are several exceptions. It was held in *Tucker v. American Surety Co. of N.Y.*[6] that a person

3. Vernon's Texas St. 1948, Act. 5551; Tex. Const. art. I, §5.
4. Ala., Ark., Calif., Del., Fla., Ill., Iowa, Kans., Ky., Mass., Mo., Mont., N.J., Ga., N.M., N.Y., Okla., R.I., S.D., Wash., and Wyoming. See 31 N.C. L. Rev. 283.
5. Ga. Code §102-103 (1933).
6. 78 Ga. App. 327, 50 S.E.2d 859 (1948).

may be eligible to have a guardian, and at the same time may not be eligible to become a patient at the Milledgeville State Hospital. In view of this and in view of the fact that this comment is not written with the guardianship problem in mind, the following procedures may not necessarily apply to the appointment of a guardian. In Georgia, as in most other states, the court of ordinary has jurisdiction of committing patients to the state hospital.[7] This is understood to be because of the property rights of the prospective patients. Mental illness differs from other illnesses in that if one is declared mentally ill, his legal rights are greatly affected. To mention only a few, he loses the right to vote, make contracts, and hold elective office.

Under the code, the first act required toward the commitment of any citizen is the filing of a petition with the Ordinary of the county wherein the prospective patient lives or is found.[8] As to who may file a petition, the answer is quite simply, "any person," who on oath, states that another is subject to be committed to the Milledgeville State Hospital.[9] The above quoted "any person," then could be a stranger, friend or relative of the prospective patient.

The next step is notice given to the three nearest relatives of the prospective patient that a hearing will be at a given time.[10] The time for the hearing must not be within ten days from time of notice. This ten day notice may be waived, if done so in writing.[11] An interesting point on the notice is that no notice at all is required to be given the prospective patient. At first blush, this seems odd; however, for psychological, or other reasons, this was not made necessary by the statutes. Absence of notice was held not to violate the state or federal constitutional due process of law clause in *Paul v. Longino*.[12] The reason given is that a personal inspection of the prospective patient is required by the Commission.

In most counties of the state, the Commission which holds the hearing is made up of two physicians and one lawyer.[13] The Ordinary shall call a hearing before this Commission on receiving the above mentioned petition and after proper notice. The Commission then decides if the prospective patient shall be committed to the state hospital. The Commission examines the prospective patient, witnesses

7. GA. CODE §49-604 (1933), as amended, Ga. Laws, 1950, p. 14.
8. GA. CODE § 49-604 (1933), as amended, Ga. Laws, 1950, p. 14. 76 Ga. App. 171 (1), 45 S.E.2d 282 (1947).
9. GA. CODE § 49-604 (1933), as amended, Ga. Laws, 1950, p. 14.
10. GA. CODE § 49-604 (1933), as amended, Ga. Laws, 1950, p. 14. 120 Ga. 537, 48 S.E. 176 (1904).
11. GA. CODE § 49-604 (1933), as amended, Ga. Laws, 1950, p. 14.
12. 197 Ga. 110, 50 S.E.2d 859 (1948).
13. GA. CODE § 49-604 (1933), as amended, Ga. Laws, 1950, p. 14.

who may be subpoenaed by the Ordinary, and information from other sources if desirable. The Commission is the very heart of the whole procedure, and it is the Commission which determines whether or not commitment shall be ordered.

The code[14] provides that in those counties which have no regularly employed county physician, or no regularly employed county attorney, a Commission of six reputable persons, one of whom will be a practicing physician of the county, shall make the commital decision. If a physician is not available in the county or an adjoining county, the Commission would be made up of six reputable persons who are qualified to serve as jurors in the county.

The effect of the decision by any of the two or three forms of the Commission is that, if the decision is in favor of commital, the prospective patient will be sent to the hospital, and in addition it serves as a judgment of incompetency. Of course, if the Commission decides not to commit, then the status of the prospective patient is unchanged.

Upon the return of a decision by the Commission, there may be an appeal to superior court[15] by the petitioner, any friend or relative of the petitioner, by the Ordinary, or guardian of the prospective patient, or any person having interest in property owned by the petitioner. This appeal must be within four days from date of the decision by the Commission. An appeal to the court of appeals or the supreme court may follow the judgment of the superior court.[16] The superior court will try the case, with a jury, as in all appeals from the court of ordinary.

We will now turn from the involuntary to the voluntary procedure.[17] Any person, over 16 years of age, who applies for admittance, or any person under 16, with permission of his parents or legal guardian, may be admitted to the Milledgeville State Hospital. However, this is provided that there are adequate facilities, provided the superintendent approves, and provided they pay.

In addition to the procedure above for voluntary patients, there is a provision in the code for resident pay patients.[18] Under this code section, one may be admitted not only by the involuntary commital procedure, but also on the certificate of three respectable practicing physicians, or one physician and two respectable citizens.

There is some question as to whether or not this code section is

14. GA. CODE § 49-616 (1933).
15. GA. CODE § 49-606 (1933).
16. GA. CODE § 49-606 (1933).
17. GA. CODE § 35-241. Ga. Laws, 1952, pp. 94-95.
18. GA. CODE § 35-228 (1933).

still in effect, in view of the doing away with the pauper code section,[19] and which makes all service free of charge to any legally committed patient. However, we find no evidence that this procedure has ever been repealed.

It will be noted that at the present time, due to lack of space at the hospital, and for other reasons, no voluntary patients are now being admitted.[19a]

In addition to the above procedures, Georgia, as most states, has what is commonly known as an "emergency commital code section."[20] This section provides that any person who will make an oath to the effect that another person is insane, is dangerous to the public and himself, or for other good and sufficient reason, the ordinary, or in his absence, the superior court judge, may issue a warrant for the person, have him arrested, have him committed to jail, or to the state hospital immediately, pending a hearing. In 1950 this section was changed so that the ordinary or judge may confine the dangerous person to some other institution rather than the jail, pending a hearing before the ordinary or judge.

The usual procedure for a patient to be dismissed from the hospital is for the superintendent and doctors there to use their own discretion. However, if a patient desires to be released, and is refused, no matter if he has been committed, or is there on certificate, he may petition either the Court of Ordinary or the Superior Court of Baldwin County.[21] In the petition he may allege any or all of the following: (1) The alleged cause of confinement did not exist. (2) The alleged cause of commitment does not exist. (3) The conviction was obtained by fraud, collusion or mistake. Regardless of how many of the three the patient alleges, he need prove only one to the jury.

It will be noted that simply because a patient has been released, does not of itself mean he is again competent to transact legal matters. The code[22] provides that he must petition the ordinary of his home county, a commission will be appointed and much the same procedure is used as when a person is committed to the hospital. The decision of the commission, as in commital procedures, may be appealed to the superior court. This "restoration" procedure, as it is called, is necessary in all cases when a person has been adjudged incompetent.

19. GA. CODE § 35-234 (1933), repealed, Ga. Laws Jan.-Feb. sess., 1953, pp. 524, 526.
19a. Information secured by special committee appointed and acting under House Resolution 132, Ga. Laws, 1955, p. 404.
20. GA. CODE § 49-612 (1933), as amended, Ga. Laws, 1950, p. 30.
21. GA. CODE § 35-236 (1933), as amended, Ga. Laws, Nov.-Dec. sess., 1953, p. 322; Ga. Laws, 1955, p. 348.
22. GA. CODE § 49-610.1 (1933), as amended, Ga. Laws, Nov.-Dec. sess., 1953, pp. 353-354.

PROCEDURES IN OTHER JURISDICTIONS

The procedure for admission to mental hospitals varies from state to state; some of these will be briefly discussed here.

In Florida[23] the procedure is not unlike that of Georgia, however there are some differences. After a petition is filed a commission is appointed consisting of two practicing physicians and a respectable citizen. This commission examines the prospective patient and reports to the county judge, who then decides whether or not the person shall be committed. Florida is one of the four states which does not provide for voluntary admission. A person must be first adjudged incompetent and then formally committed.

South Carolina[24] in 1952 revised her laws governing admission to the state mental institution. Now a person may be admitted on a voluntary basis. Also, a patient may be admitted by a motion of guardian, relative, or by any person. To be admitted in this manner, a certificate of two designated examiners is required stating that the person is mentally ill and needs treatment and because of his condition is likely to injure himself or others. When the motion is made by guardian, relative or friend, it is sufficient if the certificate states that the patient lacks sufficient insight or capacity to make application for hospitalization himself. This is only permitted however when motion is made by guardian, relative or friend. South Carolina also has a procedure for formal judicial commitment.[25] After petition is filed, two designated examiners are appointed whose duty it is to examine the person alleged to be mentally ill. If these examiners are of the opinion that the person is mentally ill a hearing is then called. Notice to the patient is required, but if felt that it would be detrimental to the patient's health, it may be waived by the court. The patient need not be present at the hearing: however, he has every right to be represented by counsel. The judge at the completion of the hearing orders the person to be committed if he believe him mentally ill; if not, he is not. Appeal to the Court of Common Pleas with a jury trial is provided.

The laws concerning hospitalization for mentally ill persons have been recently revised in Louisiana. Voluntary admission is now provided.[26] Also a relative or friend may apply to the coroner to have a person committed.[27] The coroner signs a certificate together with one

23. FLA. STAT. ANN. § 27-394.20; 394.21.
24. S.C. CODE § 32-912 (1952).
25. S. C. CODE § 32-1001 (1952).
26. LA. REV. STAT. § 28-51 (1950).
27. LA. REV. STAT. § 28-53 (1950).

from a physician, stating that they have examined the proposed patient and that he is in need of hospitalization. The application for commitment, together with the above certificates, are then presented to the judge of the civil district court who may commit the person when in his opinion it is in the best interest of the patient and the community. The judge may appoint a commission of physicians to hear evidence, examine witnesses, examine the patient and report to the court. This is not mandatory, however, a person committed without a hearing is entitled to one on demand.

New York has an elaborate set up regarding commitment procedures.[28] There are five methods provided for admission to the state mental hospital. First, there is a voluntary admission procedure. Second, the prospective patient may be admitted under certificate of the county health officer. Under this procedure, the patient must be discharged at the end of 60 days unless he voluntarily agrees to stay or is admitted under the third or fourth method. The third method is admission under certificate of one physician *when the patient does not object.* A patient may be held for 60 days and thereafter until 15 days notice is given by the patient of his intent to leave. If further hospitalization is required it must be done under the fourth method which is a judicial commitment. Under this procedure, a petition is filed by a relative, friend, etc., accompanied by a certificate of two medical examiners. If either the patient or relatives requests a hearing there shall be one, also the judge on his own motion may require a hearing. If there is to be a hearing, personal notice to proposed patient is provided for; however, the judge may dispense with the notice when he feels that it would be useless or detrimental to the person's health. It is also provided that the person alleged to be mentally ill need not appear at the hearing. The fifth measure is an emergency provision providing for commitment up to 10 days with a filed petition and a medical certificate. At the end of 10 days, the person must be formally committed or discharged. There is also a provision for rehearing by a jury within 30 days after the order.

In Alabama,[29] the court of probate has jurisdiction of mentally ill persons. To be admitted to the state hospital, a friend, relative or other person makes application to the probate judge. He in turn makes an investigation and completes the history of the person. These papers are forwarded to the superintendent of the hospital, who approves or disapproves them. If approved, the court of probate then has a hearing, calling witnesses, one of whom shall be a physician. The

28. CONSOLIDATED LAWS N.Y. ANN. b. 34-A, art. 5, § 70-90 (McKinney 1951).
29. ALA. CODE §§ 45-206, 207, 208, 209, 210 (1940).

court may sit with or without a jury. This court, or court and jury, then decides if the person should be committed.

In California every county has at least two medical examiners.[30] When application is made to the superior court of the county, which has jurisdiction of mentally ill persons, the judge shall assign two medical examiners to examine the person. After the examination, the judge will set a date for a hearing, and the mentally ill person must be given notice, with the exception that it may be omitted and given to his next of kin, if the court and medical examiners feel that it will do the person harm. At the time of notice, the person, or his next of kin may ask for a jury trial, and it shall be given. If the person or his next of kin does not ask for a jury trial, then the judge at the hearing shall decide, on advice of the medical examiner if the person shall be adjudged sane; detained in some licensed hospital; remain at home in care of a physician; make other proper disposition; commit the person to the state hospital; or commit the person to a U.S. Government Hospital. The mentally ill person shall be present at the hearing.

An exception to the above procedure is that if on examination by two medical examiners, the person does not demand a hearing, the judge then may adjudicate as listed above, without a hearing.

In cases of emergency, where a person becomes dangerous to the public or to himself, he may be detained in any appropriate place, not to exceed 72 hours, at which time he shall be freed, or formally committed to the state hospital.

For restoration to competency after discharge from a physician's care, either in the state hospital, or elsewhere, the person may file a petition with the superior court of his county, and a jury trial will be held, as in civil cases.

FEDERAL DRAFT ACT

Under the auspices of the National Institute of Mental Health of the Federal Public Health Service a suggested statute[31] was drawn up to assist the states in the revision of their present laws governing hospitalization of the mentally ill. It was not intended to be uniformly adopted by all the states but merely to serve as a guide.

Briefly, this act provides for voluntary hospitalization and four procedures are set out for involuntary commitments. Three of these are non judicial which require no notice of hearing. The only requi-

30. DEERING'S CALIF. CODES, W. & I.C.A. § 5100 et. seq. (1952).
31. NATIONAL INSTITUTE OF MENTAL HEALTH, FEDERAL SECURITY AGENCY, A DRAFT ACT GOVERNING HOSPITALIZATION OF THE MENTALLY ILL 29 (Public Health Service Pub. No. 51, revised 1952).

site is a certificate signed by two designated examiners stating that they have examined the person and that he is mentally ill and because of his illness is likely to injure himself or others if allowed to remain at liberty, or that he is in need of care or treatment in a mental hospital, and because of his illness, lacks sufficient insight or capacity to make responsible application therefor. The other two procedures are emergency procedures, one requiring certificate of a physician and the other without any medical certificate on the belief of any health or police officer. The fourth method is the standard judicial procedure which provides for notice to the proposed patient (may be omitted if the court feels it would be detrimental to the patient), leaving right to counsel etc. An examination is made by two examiners and their finding is reported to the court. At the termination of the hearing if the court feels that the person is mentally ill and needs hospitalization that person is committed.

The act also provides that a person hospitalized either voluntarily or involuntarily will retain all of his civil rights unless he has been adjudicated incompetent. This is contrary to most jurisdictions where commitment is considered equivalent to incompetency.

The Supreme Court of Missouri, in *State ex rel. Fuller v. Mullinar*,[32] held unconstiutional a statute almost identical to that suggested in the draft act. This court held that non-judicial procedures for involuntary hospitalization were a denial of due process as there was no provision for notice and a hearing before commitment. However, as may be seen in the discussion of legislation in other jurisdictions, some states have adopted procedure substantially the same as the non-judicial ones set forth in the draft act.

Possible Improvements

It seems that the present laws of this state governing hospitalization of the mentally ill could be improved. The draft act[33] discussed above could well be our guide, however there are some features which, it is believed, should not be included.

First of all, because of its dubious constitutionality, it is not considered wise to provide for non-judicial commitments. Further still, it appears that the present law should be changed to provide notice to the proposed patient at the same time giving the court power to

32. 364 Mo. 858, 269 S.W.2d 72 (1954).
33. National Institute of Mental Health, Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill. 29 (Public Health Service Pub. No. 51, revised 1952).

waive such notice when it would be detrimental to the health of the patient.

Secondly, it is suggested that the procedure for commital of persons be somewhat altered. At present, the Commission appointed by the Ordinary has the final word on commitment. The Ordinary shall have this responsibility. As a practical matter, in almost all cases, the Ordinary would rely on the report of the commission. However in some cases there may be witnesses testifying contra to the report, and in these cases, the Ordinary reports to the superior court from 4 to 30 days Four days does not give either party who wishes to appeal sufficient time to make the necessary study for the appeal. Unless the proposed patient is deemed in danger of injuring himself or others by the Ordinary, no hospitalization pending appeal is suggested.

A screening process is suggested with the idea that alcoholics, senile persons and others who are not entitled to hospitalization would be screened out. If a person were examined immediately upon arrival at the hospital, there would be no need for "screening centers" throughout the state. Examination on arrival would be the less expensive and would reach the same result.

The part of the draft act that completely separates the question of competency from that of commitment seems wise. It is therefore recommended that a patient retain all his civil rights even though committed unless there has been a specific adjudication of incompetency. This adjudication could be made by the same commission but would only be made when requested. It is believed that the factors which determine a person's need for psychiatric treatment are not the same as those required to adjudicate his competency. The present law now provides that a trial of lunacy may be demanded by the person who has been committed to the state hospital and adjudged to be a lunatic, or his friend or relative. The statute further provides that a jury trial shall be held in either the superior court or the Court of the Ordinary of Baldwin County to determine this question.

In an effort to reduce both the work and expense of these trials in Baldwin County this procedure is suggested: That a petition be filed in the Court of Ordinary of Baldwin County alleging any one of the grounds set out in Ga. Code Section 35-237. That the court of ordinary then proceed to appoint a commission similar to the ones provided for in Ga. Code Section 49-604. The physician appointed, however, should have no connection whatsoever with the Milledgeville State Hospital. This commission should proceed in a like manner as does the one utilized in the commitment proceedings. At the termination of the hearing, the Ordinary shall, after hearing the report of

the commission determine whether or not the patient should be released.

It is further recommended that this decision of the Court of Ordinary of Baldwin County should be appealable to the superior court of the patient's home within 30 days.

It is believed that this procedure will be faster and much less expensive than the jury trials in the Superior Court of Baldwin County now provided for by the present law.

A voluntary admission procedure is provided for in Ga. Code Section 35-241 which is in line with all the modern legislation and undoubtedly a good provision. The difficulty that has been encountered here is that patients entered under this provision and, as they were not compelled to stay, often left before a week was up thereby unduly burdening the administrative department of the hospital and doing themselves no good. It is believed that by requiring all voluntary patients to stay at the hospital at least 30 days after admission, this defect would be corrected.

Finally it is believed that an improvement definitely can be made in the language used in dealing with people mentally ill. Such terms as "lunatic," "prisoner," "sentence" and "accused" and any other that tends to imply that the proceedings are criminal in nature should not be used. Also the retaining of a mentally ill person in jail should be permitted only in cases of genuine emergency. Efforts should be made in all cases to prevent the mentally ill person and his relatives from thinking he is a criminal, or that being mentally ill is at all connected with crime. This can only be achieved through the complete cooperation of the court of ordinary of each county, who exercises general jurisdiction over mental illness cases.

In order to carry out the above suggested changes, the following statutory enactment is recommended.

AN ACT FOR THE HOSPITALIZATION OF THE MENTALLY ILL

1. DEFINITIONS:

Hospital as used in this act means the Milledgeville State Hospital or any other institution approved by the General Assembly for the care of mental patients.

2. INVOLUNTARY HOSPITALIZATION.

(a) Proceedings for the involuntary hospitalization of any individual may be commenced by the filing of a written application with the Court of Ordinary in the county of the proposed patient's residence, by his spouse or guardian, by a relative or friend, by a licensed physician, health officer or public welfare officer, or by the head of

any institution in which he may be. The application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and believes that he is mentally ill and should be hospitalized, or by a written statement by the applicant that the individual has refused to submit to examination by a licensed physician. If the applicant wants to have the legal capacity of the proposed patient adjudged, he may specifically request it in the application. If this request is not made, the legal status of the proposed patient shall in no way be affected by the proceedings for hospitalization.

(b) Upon receipt of an application for involuntary hospitalization, the Ordinary shall notify the proposed patient and his three nearest adult relatives, if there are any. However, if the Ordinary believes that the notice to the proposed patient might injure him, notice to him may be omitted. Notice to the patient shall be in writing, informing him that he will be interviewed by a commission, whose names shall be listed in the notice, and also informing him that if the commission unanimously agrees that his condition merits hospitalization, the Ordinary will hold an informal hearing to determine if the proposed patient shall be hospitalized. The hearing shall not be held until ten (10) days after the date of notice.

(c) The commission appointed by the Ordinary shall consist of two physicians and one attorney, who are of good reputation. It shall be the duty of the commission to interview the proposed patient and make its findings known to the Ordinary as to need for hospitalization.

(d) The interview shall be held at a hospital, or other medical facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the prospective patient's health.

(e) If the report of the commission is not unanimous in finding the proposed patient mentally ill and in need of hospitalization, the Ordinary shall immediately dismiss the application. If, however, the commission unanimously finds that the proposed patient is mentally ill and in need of hospitalization, a hearing shall be held before the Ordinary, and the Ordinary may, after hearing whatever other witnesses he thinks appropriate and after affording the proposed patient an opportunity to testify, commit the patient to the hospital if: (1) he finds that the patient is mentally ill and because of this illness is likely to injure himself or others if allowed to remain at liberty, or (2) he is in need of treatment in a mental hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization. If the applicant requests a

determination of legal capacity, and if the commission finds changes in the proposed patient's legal status is desirable, the commission shall recommend changes to the Ordinary, and the Ordinary shall adjudicate that question at the hearing.

3. APPEAL TO THE SUPERIOR COURT

(a) The person for whom hospitalization is sought, or any person on his behalf, if dissatisfied with the Ordinary's decision, may upon paying all court costs and giving bond and security for all future costs and damages, within 30 days after date of such decision, enter an appeal to the superior court of the county, where the issue shall be submitted to a jury, selected as in other cases.

(b) The proposed patient shall not be confined pending the appeal, except in those cases where the Ordinary shall decide it is necessary for the good of the patient, or the public at large. If the patient is confined, it shall be in the hospital or in a local facility which the Ordinary feels adequate.

4. SCREENING OF NEWLY ADMITTED PATIENTS

Every patient admitted pursuant to Section 2 shall be examined by the staff of the hospital, as soon as practicable after his admission, unless he has been previously examined at a state designated screening station. If such an examination is not held within 30 days after the date of admission, or if a desginated examiner fails or refuses after such examination to certify that in his opinion the patient is mentally ill and requires hospitalization, the patient shall be immediately discharged.

5. DISCHARGE FROM HOSPITAL

(a) The superintendent of the hospital shall cause each patient to be examined as frequently as practicable, but not less often than every 6 months, and if the examination shows that the conditions justifying involuntary hospitalization no longer exist, he shall discharge the patient and immediately make a report thereof to the Ordinary who had originally ordered the hospitalization.

(b) After an involuntary patient has been hospitalized for at least 60 days, he or anyone in his behalf may make application to the Court of Ordinary, Baldwin County, for release if he believes any one of the following facts exist: (1) The alleged cause of commitment did not exist at time of commitment, (2) The alleged cause of commitment does not now exist, (3) The commitment was obtained by fraud, collusion, or mistake.

(c) Upon receipt of application the Ordinary shall appoint a com-

mission of two physicians and one attorney to examine the patient. The members of this commission shall not be employees or in any way connected with the hospital. The commission, after examining the patient, shall report its findings to the Ordinary. The Ordinary shall, after considering the report of the commission, hearing the testimony of whatever witnesses he may think appropriate, and also after hearing the testimony of the patient, determine whether the patient should be discharged or returned for further hospitalization.

(d) Any person who files an application provided for in Section (c) above shall be precluded from filing another application for a period of six months.

6. APPEAL TO THE SUPERIOR COURT.

The person filing the application set out in Section 5 (b) being dissatisfied with the decision of the Court of Ordinary, Baldwin County, may upon paying all costs, and giving bond and security for all future costs and damages, within 30 days after date of such decision, enter an appeal to the Superior Court of the county from which the original commitment order issued. The issue shall be submitted to a jury, selected as in other cases.

7. VOLUNTARY HOSPITALIZATION.

(a) The superintendent of the hospital shall admit to the hospital as a voluntary patient for observation, diagnosis, care and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 16 years of age or over, applies therefor, and any individual under 16 years of age who is mentally ill or has symptoms of mental illness, if his parents or legal guardian applies therefor in his behalf. However, the patient, his parent or guardian, must agree that the patient will remain at the hospital for at least 30 days. The patient must also present a certificate signed by a qualified physician stating that he is in need of treatment. The Superintendent of the hospital may refuse to admit any voluntary patient if adequate facilities are not available or for any other reason that would be detrimental to the proposed patient or against the best interests of the State of Georgia. In case of refusal, the patient shall be furnished with a written statement giving reasons for the refusal by the superintendent.

(b) Thirty days after admission, a voluntary patient may request his release and he shall be released within five days of such request unless the superintendent of the hospital files an application for involuntary hospitalization as provided in Section 2 (a).

8. RETENTION OF CIVIL CAPACITY

Each patient at the hospital, whether voluntary or involuntary,

shall retain all civil capacity, including the power to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity. The determination by the Ordinary that a person needs hospitalization shall not in itself be construed as an adjudication of incompetency. Only in those instances where a specific request has been made and the Ordinary has found the person to lack legal capacity shall the patient be deemed incompetent.

9. RESTORATION TO SANITY

Any person who has been adjudicated incompetent and has regained capacity may, personally or by attorney, petition the Ordinary of the county in Georgia where such person legally resides, setting forth the facts and praying for a judgment of restoration to sanity. This petition may be brought even though such person is still in the custody and control of the authorities at the hospital.

NOTE: The rest of the procedure on restoration to sanity is the same as now in the code.

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THE DISCRETIONARY POWERS OF A TRUSTEE: WHAT STANDARDS DO THE COURTS USE?

One of the most difficult aspects of trusts is the discretionary powers of a trustee. What standards will the courts use in controlling a trustee's discretion? Does it make any difference that the trust instrument purports to give "absolute" or "uncontrolled" discretion? More particularly, is there any underlying principle that will reconcile the ostensible confusion concerning a trustee's discretionary powers?

That there is confusion in the rules and cases concerning a trustee's discretionary powers is indicated by a look at the authorities. According to the Restatement, a trust instrument may give the trustee "absolute" or "unlimited" discretion. "These words are not interpreted literally but are ordinarily construed as merely dispensing with the standard of reasonableness."[1] Some state statutes by their wording sanction absolute discretion given to a trustee.[2] Courts will make

1. RESTATEMENT, TORTS § 187 (j).
2. "A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trusts." CAL. CIV. CODE § 2269; MONT. REV. CODE 1921 § 7916; N.D. REV. CODE 1943 § 59-0212; S.D.C. 1939 § 59-0211.