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Commitment Procedures in Colorado

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COMMITMENT PROCEDURES IN COLORADO

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Melodramatic literature abounds with lurid accounts of the "railroading" of sane persons by scheming families or business associates engaging in nefarious tricks to deprive the victim of his property or to remove him from his rightful place in society for wicked and insidious personal reasons. There still lurks in the public mind some vestiges of the uneasy suspicion that "people as sane as you and I" are being committed secretly and illegally, surreptitiously snatched from their homes and whisked off unceremoniously to an asylum from which there is no escape.

The history of this line of thinking is vividly presented in *The Mentally Ill in America* by Albert Deutsch.[1] A comprehensive historical survey of public attitudes, the growth of psychiatric knowledge and understanding, the changing concepts of mental illness and treatments, the mental health movement, and the development of statutory procedures in the different states, this volume is a valuable source book for the reader concerned with any phase of the subject.

From the days when the mentally disordered person was considered a menace to the community, incarcerated, chained and tended by guards with whips, we have come to recognize him as an individual afflicted with disease who, for his own welfare or the safety of others, must be hospitalized for a short or lengthy period of time against his will, in other words as a medico-legal problem. From the days of Mrs. Julia Packard's commitment under an Illinois statute allowing a husband to commit his wife "without the evidence of insanity required in other cases," [2] we are developing a system of medical, legal and judicial determination of mental status that more nearly meets the demands of psychiatric knowledge and public conscience. From the preoccupation with fears of railroading and the hopelessness associated with "insane asylums," the public is turning toward mental health associations, learning facts, supporting necessary revision of the laws, exploring with the medical profession the great universe of knowledge, experience and research for preventive measures and broader understanding of mental illnesses.

It is estimated that one out of every 12 children born in the United States each year will sometime during his life suffer a mental illness severe enough to require hospitalization.[3] At the present time more than half the hospital beds in the country are occupied by mental patients. There are about 680 mental hospitals in the country and it costs the tax payers over five hundred mil-

[1] Doubleday, Doran & Co., Publisher (1938).
[2] Statute enacted in 1851.
[3] National Association for Mental Health, Inc., April, 1952.

lion dollars a year in operating costs alone.[4] The average daily population of these mental hospitals is about 650,000 with average annual new admissions and re-admissions totaling about 350,000. The number of people hospitalized for mental illness is increasing steadily and in addition to those who go to mental hospitals it is estimated that 30% of the patients in general hospitals and 50% of patients consulting general medical practitioners are suffering from mental illness or physical illnesses associated with mental illness and other personality disturbances.[5]

Sensationalism in the press hinting darkly of sinister motives and "wrongful" commitments serves no constructive purpose, contributes nothing to the public understanding of the real problem, and obscures the benefits to the patient and society which result from close cooperation between the legal and medical professions in necessary commitments.

Colorado, like every other state, is faced with a large annual net increase in the number of patients requiring hospitalization for mental reasons, concomitant with a scarcity of trained personnel, overcrowding in existing institutions, steadily mounting costs, and consequent operating deficits.

The statute [6] under which the county courts of Colorado order the commitment of an individual to a mental institution is believed to be among the more enlightened in the country. This, however, does not mean that it does not need thoughtful amendment or revision. Although the principal objective of this article is to present a discussion of commitment procedures, it is intended also to point up some of the reforms or revisions considered desirable to bring the law up to date with recent advances in psychiatry: to modernize terminology and definitions, delete anachronisms, and clarify ambiguities.

The confinement, adjudication and commitment of the mentally ill are medico-legal problems charged with public interest. They must be resolved administratively in terms of three paramount considerations: (1) the health of the patient, (2) the protection of his civil rights, and (3) the welfare of the community. With these in mind and limiting ourselves to the purely civil matters covered by the statute (as distinguished from proceedings in criminal cases) let us look at the step by step procedures.

Involuntary hospitalization may be accomplished in Colorado in one of three ways: (1) by complaint in lunacy; (2) on petition for order to hold and treat, (3) by emergency police procedure.

THE COMPLAINT IN LUNACY

Under §3, c. 105, any reputable person may file in the County

[4] During Congressional hearings on the National Mental Health Act, passed July 3, 1946, figures were presented to the Congress showing that approximately 8 million persons in the country were suffering from some form of mental illness, and the cost to the nation including loss in earning power reaches the staggering figure of one billion dollars a year.

[5] National Association for Mental Health, Inc., *supra.*

[6] COLO. STAT. ANN., c. 105 (1935).

Court a duly verified complaint alleging that an individual is so insane or distracted in his mind as to endanger his own person or property or the person or property of another if allowed to go at large, or that the individual is by reason of old age, disease, weakness of mind, feebleness of mind or from any other cause (such as chronic alcoholism) unable to manage and take care of himself or his property without assistance, and therefore would be likely to be deceived or imposed upon by artful or designing persons. In the case of a mentally defective individual, the complaint alleges mental deficiency or feeblemindedness and inability to receive instruction in the public schools. Ordinarily the complainant is a member of the family whose duty it becomes to sign the necessary papers. By court rule in Denver and several other counties, the complaint must be supported by a doctor's letter recommending hospitalization and examination by the Commission. This rule has the salutory effect of cutting to a minimum "spite" actions and may be helpful if the good faith of the complainant is ever questioned. In certain aggravated cases where a preliminary examination and supporting opinion from a doctor is virtually impossible to obtain, the court may waive the letter and accept some other evidence of need for hospitalization. This "other evidence" may be in the form of a petition signed by numerous neighbors, a statement of fact by apprehending police officers, a police record for drunkenness sufficient on its face to indicate present chronic alcoholism, or any other evidence satisfactory to the court.

PREPARATORY WORK

Preparation of the complaint, preliminary investigation and arrangements for admission to a hospital pending hearing are handled by the County Attorney, or in some of the small counties, by the clerk of the county court. In addition, in Denver County where the Commission sees an average of twelve to fifteen patients per week, the County Attorney "authorizes" the complainant to file and at the same time advises the court where the patient is, where he may be confined pending the hearing and whether or not the assistance of the Sheriff is required to move the patient to the designated hospital. In some cases the patient is already in a hospital or can remain at home pending the hearing, in which case the commission meets at the home on the scheduled day.

Court costs for the hearing are $45, payable when the complaint is filed. Costs for hearings on indigent patients are paid by the county. Costs of hospitalization pending the hearing are paid by the patient, his estate if any, his relatives or the county of his residence.

Upon the filing of the complaint the court issues the appropriate orders. Where the patient for example is to be moved from a private home to a hospital, the court issues an order to the sheriff to take the individual into custody and transport him to the hospital, where he is to be confined and cared for pending examination and hearing by the commission. Copies of the com-

plaint and order are served on the patient and the hospital.

The patient is entitled to five days notice of the time and place of the hearing. Service is made by the sheriff on order of the court. This notice is mandatory and cannot be waived.[7] A hearing held before the expiration of the five days is illegal and any subsequent proceedings or orders are held for naught. As a practical matter the five days is always extended by the operation of Rule 6 of the Colorado Rules of Civil Procedure which provides that in computing time of less than ten days Sundays and holidays are excluded. Because of the serious shortage of hospital beds for the mentally ill, purely custodial cases are an undue burden on the limited staff and facilities of an institution geared to a treatment program for the short term acute types of disorders. The financial circumstances of the family are often pressing, and the cost of the delay for statutory notice may run well over $100. However at the present time there is no legally satisfactory means to determine in advance whether such notice is necessary or advisable. The result is that the five-day notice is served on all alike, on the chronic alcoholic who at the moment is sober (and convinced of his ability to stay sober), on the senile who can read the words but forgets from one sentence to the next, and on the mentally deficient infant who never will learn to read. In "aggravated" cases the court may waive service of such notice on recommendation of the guardian *ad litem*.[8] In the experience of Denver County this provision is rarely used, and then only upon request or recommendation of a psychiatrist who believes such notice may be harmful to the patient. A definition of "aggravated" might clarify the problem.

The commission, appointed by the court, consists of two doctors resident in the county, directed to examine the patient and report to the court their answers to four statutory questions. The court also appoints a guardian *ad litem* to represent the patient at the hearing. In counties where there is only one doctor, the court may appoint a doctor from an adjoining county or some reliable person not a doctor.[9] Many practicing physicians hesitate to examine a patient for mental illness, even as to the less subtle forms of derangement. However, resident psychiatrists are rarely located in the smaller counties of the state, and so except in the larger communities the task of determining insanity, incompetence or mental deficiency falls upon the general practitioner. This problem is somewhat alleviated by the practice of some of the smaller county courts of sending patients in to the Colorado Psychopathic Hospital at the University Medical Center, for psychiatric evaluation. In Denver, Pueblo, Colorado Springs and some other cities the courts limit appointments to the commission to specialists in psychiatry.

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[7] Hultquist v. People, 77 Colo. 310, 236 P. 995; Okerberg v. People, 119 Colo. 529, 205 P. 2d 224.

[8] COLO. STAT. ANN., c. 105 § 2 (1935).

[9] *Op. cit.*, § 12.

In Denver county the hearings are scheduled for Tuesday afternoon each week. Because of the number of patients to be seen on that one day, the doctors make a practice of examining all patients sometime prior to the hearing. In this way difficult or borderline cases are discovered and given more careful study than some other types of cases require. This affords the additional safeguard of examination on two different occasions.

Prior to the hearing at the request of the complainant and with the approval of the attending physician, the court may allow withdrawal of the complaint. It has been held that once the question of a person's competence or sanity has been raised by the filing of a complaint, the public acquires an interest and is entitled to have the matter determined according to law.[10] The most frequent ground for withdrawal is the recovery or marked improvement of the patient.
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A hearing before the commission may be continued upon request of any interested person.

Witnesses may be subpoenaed to give testimony at the hearing. Relatives and friends who appear in behalf of the patient or complainant may offer their opinions as to the patient's mental condition.[11] Attorneys appearing for the patient or his family may elicit additional testimony to be considered by the doctors in reaching their decision on diagnosis and recommendation to be made to the court.

The hearings before the commission are closed to all except persons with some natural and proper interest in the case. The proceedings are informal and so far as possible are conducted in a manner appropriate to the patient's status as a patient and not as one charged with an offense. If a member of the hospital staff is going to testify, he is usually the first called upon to give a medical history, diagnosis and recommendation, if any. Members of the family and friends may be questioned as to their observations and opinions, and are frequently consulted as to their desires in the matter of care in a public or private institution. When the doctors decide on the diagnosis and disposition of the case to be recommended to the court, the hearing is concluded. The Report of the Commission consists of Yes or No answers to four statutory questions:

> (1) Is the person complained against so insane or distracted in h.... mind as to endanger h.... own person or property, or the person or property of another, or others, if allowed to go at large? (2) Is such person, by reason of old age, disease, weakness of mind, or from any other cause, incapable, unassisted, to properly manage and take care of h....self or h.... property? (3) Is such person

[10] State *ex rel. Paxton v. Guinotte*, 257 Mo. 1, 165 S. W. 718, Anno.: 51 LRA (NS) 1191.

[11] Shapter v. Pillar, 28 Colo. 209, 63 P. 302.

so mentally defective as to be incompetent to care for h....self or h.... property? (4) Does said person have any personal or real estate?[12]

An affirmative answer to any one of the first three questions renders the patient "commitable," or more accurately "adjudicable." These questions are filled in and recommendation as to commitment or custody is noted. The doctors sign the report before proceeding to the next case. When all cases scheduled for hearing have been examined, the commission returns to court and the reports are filed. If the two doctors disagree on any particular case, they file separate reports and the court is then empowered to appoint a third member of the commission.[13]

If the questions relative to the patient's mental condition are all answered in the negative, the patient is discharged and upon filing of the report the court enters an order dismissing the case.

Where one or more of these first three questions are answered in the affirmative, the court enters an order adjudicating the patient insane, incompetent or mentally defective, and at the same time orders commitment to an institution or custody to an individual.

OBJECTION MUST BE TIMELY

It has been held that the Court is not bound by the findings or recommendation of the commission, but unless timely objection is made with motion for leave to present further evidence, the court will proceed as outlined above.[14]

Patients who are committed to a state or private institution may be transported to the designated place by the sheriff, by a member of the family or by private ambulance. Unless special arrangements are made in advance the order will be directed to the sheriff. Costs of transportation by the sheriff are figured on a *mittimus* mileage schedule provided by statute.[15] Relatives are usually billed for this expense and the trip from Denver to Pueblo averages $30 per patient. Ambulance costs for one patient are about $50; for two patients, $25 each.

Every patient adjudicated pursuant to the report of a lunacy commission is entitled to a jury trial if his demand is filed within five days of the order of adjudication (excluding Sundays and holidays). He may file his demand himself or it may be filed in his behalf by any responsible person. It may be noted here that a jury trial is available at no other time. One of the duties of the guardian *ad litem* is to see that this right is protected and exercised in the proper case.

The word "proper" is used advisedly. At the present time, without explicit judicial guidance in the form of Supreme Court cases, the guardian *ad litem* exercises broad discretion in the per-

[12] COLO. STAT. ANN., c. 105 (1935) V. 4 § 6—(old volume).
[13] *Ibid.*
[14] *In re* People in Interest of Hill, 118 Colo. 571, 198 P. 2d 450.
[15] *Loc. Cit.*, § 16.

formance of his duties.[16] Where the patient demands a jury trial at the time of the commission hearing or where the guardian *ad litem* is for any reason dissatisfied with the report and recommendation of the commission, he will file the demand himself. In some cases he will explain to the patient in detail his legal rights and ascertain whether or not the patient understands the nature of the inquiry into his mental condition, and will file the demand if requested by the patient to do so. In other cases the guardian *ad litem,* concluding that no beneficial or necessary purpose could be served by giving such explanation, offers no more than perfunctory assistance or information.

In the absence of special request the jury trial is scheduled for the next regular jury term. The court in its discretion may order confinement in any suitable place pending trial.[17] The case is prosecuted by the County Attorney in the name of the People of the State of Colorado in the interests of the patient. The patient is represented by his own private attorney or by counsel appointed by the court. The trial is governed by the customary rules of evidence and civil procedure. The jury is required to answer the four statutory questions submitted to them in the form of a special verdict. The court is directed by statute to enter a decree conforming to the jury verdict. It is apparent from the precise wording of the statute that the jury is limited in its deliberations to answering the questions and it is the function of the court alone to determine whether or not confinement is necessary and if so, to designate the suitable place of confinement. Although the right of jury trial is waived after the expiration of five days from the order of adjudication, it has been held that the jurisdiction of the court in lunacy matters as in questions of alimony, and custody of children, is continuing, and all proceedings, judgments and orders are subject to change and modification on petition and proper showing.[18] Procedures for legal restoration to reason are discussed later.

THE HOLD AND TREAT ORDER

The second type of involuntary hospitalization is known as the Hold and Treat Order, issued by the court on petition alleging need for hospitalization, diagnosis, treatment and care. The petition, like the complaint in lunacy, must be accompanied by a statement from a doctor. Court costs for filing petition are $5.00. This method is appropriate and preferred in cases believed to require only short term treatment. The order to hospitalize has no legal effect on the patient's capacity to perform legal acts. Release from the order is on recommendation of the attending physician. If release is sought against medical advice the court may hear testimony on a petition to release. If it appears to the court from such testi-

[16] See Hultquist v. People *opp. cit.;* Isham v. People, 262 P. 89, 82 Colo. 550.
[17] *Loc. Cit.,* § 11.
[18] *In re* People in Interests of Hill, *opp. cit.;* Isham v. People, *opp. cit.;* Hultquist v. People, *opp. cit.*

mony that it would be unwise to release the patient the court may refer the question to the commission. In the language of the statute, the patient may be confined under such order "until the judge of the county court may determine whether or not an examination into the mental condition of said person is desirable by the lunacy commission." [19]

EMERGENCY POLICE PROCEDURE

The third type of involuntary hospitalization is known as the emergency police procedure. §3 of c. 105 provides that when a law enforcement officer finds an insane or distracted person at large, he may apprehend such person without an order of court. The officer is required to present the patient forthwith before the court, and the judge then determines whether or not the matter should be referred to the commission. If such is the case, the court is empowered to order confinement in some suitable place pending examination by the commission and to order the matter set down for hearing as though a complaint had been filed. The patient dealt with in this manner may be the transient victim of amnesia, the deluded indigent soul picked up for shelter, the "furiously mad" individual threatening violence to himself or others. The element of risk involved in this procedure stems from the general proposition of law that the person so apprehended must in fact be of unsound mind.[20] His apprehension is justified only on that ground and it is therefore only the most obvious case and the case requiring immediate action that is handled under this provision.

RELEASES FROM CONFINEMENT

The State Hospital is authorized by statute to release a patient on "probationary discharge" or to release the patient unconditionally as restored to reason.[21] This latter has the full effect of a court order restoring the civil rights and legal capacity of the individual. As a matter of practice, this power is seldom exercised by the superintendent. A patient sufficiently improved to be considered a "good risk" for satisfactory readjustment in society is released on a two-year probationary discharge. If he does not require rehospitalization within that period he is granted automatically an administrative discharge, the effect of which is to remove his name from the list of patients at the hospital. It has been held that the administrative discharge is in no way effective as a restoration to reason.[22] The court order of adjudication of insanity, in competence or deficiency remains in full force and effect. A patient released on a probationary discharge may be placed in the custody of family or friend, or released "on his own

[19] *Loc. cit.* § 3.

[20] Porter v. Pritch, 70 Conn. 235, 39 A. 169, 39 LRA 353; cases cited in 28 Am. Jur. 675 § 31.

[21] *Loc. cit.* § 18 (c).

[22] People v. County Court, 110 Colo. 249, 132 P. 2d 799.

recognizance." Determination of these details lies within the discretion of the Superintendent of the Hospital.

Release from the State Hospital by order of court transferring custody to a private hospital or to a member of the family is frequently requested. The court generally requires some showing of the advisability of such a transfer. This is usually in the form of a statement from the superintendent, if not actually recommending the action then at least expressing his opinion that, if released, the patient would not be a danger to himself or others. In a contested case this question, as any other relating to confinement or release, can be presented and determined in open court on petition filed in behalf of the patient.

Release of an adjudicated patient from a private hospital to the custody of family or friends may be ordered by the court upon request supported by recommendation of the attending physician.

Although the County Courts have exclusive original jurisdiction in so-called lunacy matters appeal lies to the District Court as in other types of cases.

RECOMMITMENTS

The procedure for rehospitalization of an adjudicated patient depends on his status when the need arises. We shall consider these in order.

A patient who has been released from the State Hospital on a probationary discharge and has been out less than two years can be returned to the hospital by the individual to whose custody he was released or by the sheriff acting on order of court pursuant to a change of custody order. If the patient has become acutely ill the court may order confinement pending transportation.

If the patient has been out of the hospital longer than two years he can be recommitted only by order of court on proper showing of the need for hospitalization.[23] There is no requirement for a hearing or examination by a commission. Any "showing" satisfactory to the court is sufficient. The court may require nothing more than a doctor's statement or it may set the matter for hearing and weigh extensive testimony.

When a patient escapes from the State Hospital, the superintendent determines whether his condition demands immediate search and re-confinement or whether he may be safely at large. If it appear that the patient is a potential danger to himself or others law enforcement agencies throughout the State are notified and every effort is employed to apprehend and return the patient to the hospital. If the escapee eludes detection and remains at large for two years he acquires the automatic administrative discharge afforded to patients released under the probationary discharge. His recommitment is by court order on proper showing of need.

A patient adjudicated and placed in the custody of family, friend or private institution may be committed to the State Hospital

[23] *Ibid.* § 18 (c).

under a change of custody and original order of commitment. This applies frequently in cases of senility where adjudication has been advisable for the protection or management of property, but the patient's condition did not at the time warrant commitment. Later he may have become noisy, disturbing other patients in the convalescent home, or a nursing problem requiring constant attention, or taken to wandering aimlessly and getting lost, or in some other way develop changes that make it now impossible or inadvisable for him to remain at home.

A problem not infrequently encountered in Denver is the patient who has been adjudicated in one county and who later becomes acutely ill in another county. When these appear to be the facts and there is no immediately available means of returning the patient to the county in which he was adjudicated, there is a situation that requires temporary action pending issuance of the proper order by the adjudicating court. Where possible this is handled by telephone and the orders of recommitment or change of custody and transportation to the State Hospital are issued to the sheriff of the county where the patient is being held.

Occasionally in these cases there is nothing more than a suspicion that the patient was once adjudicated in another county. If it cannot be confirmed it is necessary to proceed according to one of the three methods outlined earlier in this paper. It is entirely possible, in other words, for a patient to be examined by commissions and adjudicated incompetent in more than one county of the state. It has been suggested as a means of obviating such duplication of action, that the State Public Health Department, Division of Mental Hygiene, maintain a record of all adjudications and restorations to reason in the state. The county courts and the State Hospital would report to the Health Department all changes in legal status relative to mental competence.

RESTORATION TO REASON

Upon recovery the adjudicated patient may be restored to reason, thereby recovering his civil and legal rights suspended during the illness.[24] The patient presents to the court a letter from a doctor stating that in his opinion the patient is well and able to manage his own affairs, together with the petition of any responsible person setting forth his belief that the patient has recovered and requesting re-examination by court-appointed doctors. In Denver a letter from the City Attorney is frequently accepted by the court in lieu of the petition. It is usually the patient himself who appears to file for re-examination, although it may be done for him by his attorney or friend. Upon filing of the doctor's letter and petition and payment of $20 court costs, the court appoints two doctors to re-examine the patient and report their findings. A "hearing" or examination in the presence of both doctors is not required. The patient visits each doctor at the appointed times and later the doctors file a joint report to

[24] *Ibid.* § 18 (a).

the court. The court immediately notifies the patient of the result, and if the report is favorable, an order is issued restoring him to reason. If he has an estate under management of a conservator, the court further notifies the fiduciary and calls his attention to the statute requiring final accounting and closing of the estate.[25] If the report of the doctors is unfavorable no order is issued and the adjudication remains in full force and effect. There is no limitation on the number of times a patient may petition for restoration and no required interval of time between petitions. Although the court usually appoints for re-examination the same doctors who sat on the original commission the judge may and frequently does, on the second and subsequent re-examinations, appoint other doctors.

The time required to complete the restoration procedure depends almost entirely on how soon the doctors can see the patient. In the absence of unusual circumstances, the joint report of the doctors is filed within one week of their appointment by the court.

In cases of extreme financial hardship, the court may waive costs. Facts supporting request for waiver of costs should be set forth in the petition for re-examination.

Certified copies of the order of restoration are supplied by the court at a cost of $1.00 each. These are required by some employers and federal agencies for re-employment or re-assignment of benefit checks.

SUGGESTED STATUTORY CHANGES

Authorities both medical and legal are in general agreement on the need to revise terminology carried over from another era in the diagnosis and treatment of mental illness. The word lunacy itself survives from the day when eminent medical men advanced their belief that the "spells" were controlled by the lunar cycle. There may not be agreement on the extent of the revision needed; indeed it would appear that some would introduce an entirely new vocabulary with respect to commitment and adjudication. The law however reflects the attitudes of the people and will not anticipate demand. The demand now is for revision commensurate with general understanding of mental illness. It is no longer appropriate or acceptable, for instance, to hold "inquisitions or inquests in lunacy." Words associated with criminal charges or procedures are offensive to relatives and possibly harmful to the patient, and should be deleted. The Bar Association, the Neuropsychiatric Society, the County Judges Association and a special committee of the State Legislature are at work now on recommendations to be made to the Legislature in January, 1953.

A careful reading of 1935 Colorado Statutes Annotated, Chapter 105, Section 3, reveals three methods of initiating involuntary hospitalization, as outlined earlier. It is believed desirable to

[25] COLO. STAT. ANN., c. 105 § 16 as amended, Session Laws, p. 557 (1951); COLO. STAT. ANN., c. 176 § 227, § 230 (1935).

clarify these by setting them up in subsections, and in regard to the Hold and Treat Order, to specify a time within which the court will determine the advisability of examination by the Commission or discharge the patient.

It is estimated that 1% of the population is mentally retarded to the extent of requiring special care or training. There are many features of the problem that differ from those of the mentally ill and the senile. Early recognition by the Legislature of the special and different nature of the problems has apparently complicated instead of simplified the situation. The subject is vast and might well be the topic of an entire article. Some of the special problems that need legislative study and clarification may be enumerated.

The Homes and Training Schools at Ridge and Grand Junction are set up as "schools" and are not bound to admit patients committed to them by order of court. Ultimate liability for the cost of care and maintenance of the patients may fall on the county of residence [26] rather than upon the State as in the case of patients committed to the State Hospital. Section 8 of Ch. 105 prohibits the commitment of persons under 16 years of age to the State Hospital *if* the institutions at Ridge or Grand Junction have accommodations for such person. Long waiting lists at both institutions discourage courts and families. Patients who have become community problems or tragic burdens in families with other growing children are sometimes admitted ahead of others on the list, or in the last event are committed to the State Hospital.

Although the institutions at Ridge and Grand Junction are established as schools and make valiant efforts to function as such, the fact remains that a pitifully small percentage of their charges are "trainable" in any sense of the word. If the purely custodial cases are not to be cared for in these institutions; if these homes and schools are to admit only the "trainable" individuals, the legislature should so specify and provide other facilities for the untrainable.

A similar urgency exists with reference to senile patients who require special nursing care and for whom there is presently no known psychiatric treatment. A state supported home for the senile aged would relieve the State Hospital of this large block of purely custodial cases and permit the development of sound treatment programs for patients suffering from mental illnesses that may respond to such treatment.

Not more than a dozen of the 63 counties of the State have hospital facilities for even temporary care of the mentally ill. As indicated earlier, these patients are frequently sent in to the Colorado Psychopathic Hospital in Denver for examination and diagnosis. If the psychiatrists there believe that the patient will require long-term treatment and recommend commitment to the State Hospital, a problem arises as to the court procedures. As a matter of practical necessity, to insure proper care for the patient

[26] See DICTA, Dec., 1951, Discussion by Wachob.

pending commitment, to avoid delay and cost of transportation, an arrangement has been in effect for a number of years by which the court of the resident county transfers jurisdiction of the case to the court of Denver County, with a request to proceed with examination by a Denver County Commission.

The same problem arises when a Colorado resident is being returned from another state. Authorization is given by the State Department of Public Welfare for the other state to transport the patient to the Colorado State Hospital in Pueblo. If there were facilities in the patient's county of residence for hospitalization pending examination by the commission it would seem to be desirable to place him there and proceed with a hearing in the local county court. Since this is a practical impossibility the patient is usually taken directly to the State Hospital in Pueblo, and the Court of the resident county transfers jurisdiction of the case to the Pueblo County Court. The resident county guarantees payment of court costs in the event the patient and his family are indigent.

There is no statutory authority for this practice, and consideration by the Legislature would seem to be in order.

The hospitalization, treatment and protection of persons of unsound mind require the cooperative efforts of the medical and legal professions, the courts and the social agencies and the general public. The lawyer may have a duty to the court and to society that supersedes his duty born of the attorney-client relationship.[27] Some understanding of the medical problem, the nature of the illness, the symptoms and prognosis for treatment, the latent dangers manifested by apparently harmless delusions, are absolute requirements for a wise decision.[28] Trained as he is in adversary proceedings the lawyer concerned with a problem of mental illness must readjust his sights and understand the full import of the court's opinion in the *Hawkyard case.*[29] The lunacy hearing is there described as "a statutory proceeding by the state for the protection of an unfortunate individual and his property." It is

> not instituted for the purpose of punishing a mental incompetent or to deprive him of any property rights, but is a proceeding to protect him from the impositions of unscrupulous persons and to conserve his property for his use and benefit. It is in no sense adversary. . . .

An understanding of this principle by practicing attorneys would help alleviate some of the unfortunate situations in which the patient suffers further mental stress from attending legal proceedings. Such proceedings should be held in the atmosphere of a consulting room or hospital clinic instead of in the litigious atmosphere of a courtroom.

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[27] Hawkyard v. People, 115 Colo. 35, 169, P. 2d 176: The opinion of the patient's attorney concerning the mental competence of his client is not barred by the rule relating to privileged communications.

[28] Psychiatry for the Lawyer, 31 Corn. L. Q. 327 (1946).

[29] Hawkyard v. people *opp. cit.*