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CASENOTES

IN RE HAYS:*
ZEALOUS PROTECTION OF THE VOLUNTARY PATIENT'S RIGHT TO REQUEST DISCHARGE PRIOR TO INVOLUNTARY COMMITMENT

The Illinois Mental Health and Developmental Disabilities Code[1] (Code) established three independent procedures[2] for the admission of an adult to a mental health facility.[3] An individual may

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* 102 Ill. 2d 314, 465 N.E.2d 98 (1984).

1. ILL. REV. STAT. ch. 91 1/2, §§ 1-100 to 6-107 (1983). In 1973, Illinois Governor Dan Walker established a commission to evaluate state mental health laws and to recommend specific revisions. Report, *Governor's Commission for the Revision of the Mental Health Code of Illinois*, 217 (1976) [hereinafter cited as *Commission Report*].

2. The first procedure, informal admission, is codified at ILL. REV. STAT. ch. 91 1/2, § 3-300 (1983). This admission procedure is based upon a person's own request and the approval of the facility director. The person retains the right to immediate discharge during day-shift hours. *Id.* Informal admission is the preferred method because it closely resembles traditional medical hospitalization. *Commission Report*, *supra* note 1, at 39. *See also* Beis, *Civil Commitment Rights of the Mentally Disabled, Recent Developments and Trends*, 23 DE PAUL L. REV. 42, 52 (1973) (ideal form of admission). The Illinois legislature incorporated the informal admission procedure into the Code of 1963. ILL. REV. STAT. ch. 91 1/2, § 4-1 (repealed 1967) (re-enactment at ILL. REV. STAT. ch. 91 1/2, §§ 3-1, 4-1 (1967)).

The second procedure, involuntary admission, can be invoked in either emergency or non-emergency situations. ILL. REV. STAT. ch. 91 1/2, §§ 3-600, 3-700 (1983). Each situation, however, requires a petition including a detailed statement of reasons why the person is being subject to involuntary admission, the relationship of the person filing the petition to the patient, any financial interests involved, and the names of witnesses to the asserted facts. *Id.* at § 3-601(b).

The focus of this casenote is on the third procedure, voluntary admission. This section, describing voluntary admission proceedings, states:

> Any person 16 or older may be admitted to a mental health facility as a voluntary patient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director deems such person clinically suitable for admission as a voluntary patient.

ILL. REV. STAT. ch. 91 1/2, § 3-400 (1983).

3. *Id.* at § 1-114.

> "Mental health facility" means any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof, for the treatment of persons who are mentally ill and includes all hospitals, institutions, clinics, evalua-

be subject to commitment through informal, involuntary, or voluntary proceedings. Since 1945, the voluntary admission procedure has included a patient's statutory right to request discharge prior to initiating involuntary commitment proceedings.[4] In *In re Hays*,[5] this right was challenged when an involuntary commitment petition was brought against a voluntarily admitted patient who had not requested a discharge. The Illinois Supreme Court addressed the question of whether section 3-403 of the Code prohibited a private hospital from initiating a petition for involuntary commitment against a voluntary patient who had not requested a discharge.[6] The *Hays* court held that the voluntary patient's statutory right was violated when an involuntary petition was initiated prior to the patient's request for discharge.[7] The court's decision demonstrates a commitment to a faithful and strict interpretation of the Code[8] that may serve as a consistent guideline for the protection of all mental health patients' rights, especially those enumerated in the Code's bill of rights.[9]

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tion facilities, and mental health centers which provide treatment for such persons.

Id.

4. *Commission Report*, *supra* note 1, at 41. The voluntary patient's right, re-enacted in 1979 states:

> A voluntary patient shall be allowed to be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after he gives any treatment staff person written notice of his desire to be discharged unless he either withdraws the notice in writing or unless within the 5 day period a petition and 2 certificates conforming to the requirements of paragraph (b) of Section 3-601 and Section 3-602 are filed with the court. Upon receipt of the petition, the court shall order a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, and to be conducted pursuant to Article IX of this Chapter. Hospitalization of the patient may continue pending further order of the court.

ILL. REV. STAT. ch. 91 1/2, § 3-403 (1983). *See also Id.* at § 3-400 (voluntary admission statute) (reprinted *supra* note 2).

5. 102 Ill. 2d 314, 465 N.E.2d 98 (1984).

6. *Id.* at 317, 465 N.E.2d at 99.

7. *Id.* at 320, 465 N.E.2d at 101.

8. A strict construction is one which limits the application of the statute by the words used. 2A J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 58.02 (C. Dallas Sands ed. 4th ed. 1973 & 1984 Supp.). The *Hays* court limited the application of involuntary petitions to voluntary patients who had requested a discharge because of the statute's use of the word "unless." *Id.* at 319, 465 N.E.2d at 100. A literal interpretation makes a statute apply to more situations than a strict construction. 2A J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, at § 58.02. If the *Hays* court had used a literal interpretation, it would have construed the involuntary provisions to be applicable to voluntary patients who had or had not requested a discharge. Under a literal construction the court would have ignored the legislature's clear intent to promote voluntary admissions. For a discussion of Illinois' intent to promote voluntary admissions, see *infra* note 46.

9. ILL. REV. STAT. ch. 91 1/2, §§ 2-100 to 2-111 (1983). The Commission recommended that the legislature codify the rights of mentally disabled persons

Robert Hays voluntarily admitted himself to the psychiatric unit of a private hospital. While under the hospital's care, Hays physically resisted hospital personnel and refused to take prescribed medication.[10] He also spoke of a desire to end his life. The hospital decided to physically restrain and forcibly medicate Hays. Consequently, he became calm and caused no further disturbances.[11]

As a result of his behavior, the hospital petitioned the Circuit Court of Macon County to have Hays involuntarily committed.[12] Pursuant to applicable Code provisions, the first statutorily required certificate[13] was issued and Hays was transferred from the

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specifically because the 1967 Code's enumeration of rights was vague and ill-defined. *Commission Report, supra* note 1, at 1.

10. *Hays*, 102 Ill. 2d at 316, 465 N.E.2d at 98. In cases involving the voluntary patient's right to request a discharge, the state consistently argues that the facts of the case warrant a re-interpretation of the statutory right. In *Hays*, the state argued that three facts warranted a broad interpretation. Brief for Appellant at 10, 12, *In re* Hays, 102 Ill. 2d 314, 465 N.E.2d 98 (1984). First, the state argued that a potentially dangerous patient could time his request to leave to prevent the filing of an involuntary petition. Petition for Leave to Appeal at 2, *In re* Hays, 102 Ill. 2d 314, 465 N.E.2d 98 (1984). Second, the state contended that the statute did not explicitly forbid an involuntary petition from being instituted against a voluntary patient who had not requested discharge. Third, the state saw no other means by which a private hospital could transfer a deteriorated voluntary patient. Brief for Appellant at 10, 12, *In re* Hays, 102 Ill. 2d 314, 465 N.E.2d 98 (1984). *See also In re* Meyer, 107 Ill. App. 3d 871, 872, 438 N.E.2d 639, 640 (1982) (patients became aggressive toward the staff and, since they might request to leave, involuntary commitment was necessary); People v. Hill, 72 Ill. App. 3d 638, 640, 391 N.E.2d 51, 53 (1979) (not the type of voluntary admission the legislature was trying to promote); *In re* Clement, 34 Ill. App. 3d 574, 575-76, 340 N.E.2d 217, 218 (1975) (condition deteriorated and daily restraint was required, thus a more structured facility needed). The courts have consistently rejected these arguments and have refused to construe this statute to deny this right to a voluntary patient. *Meyer*, 107 Ill. App. 3d at 875, 438 N.E.2d at 643; *Hill*, 72 Ill. App. 3d at 641, 391 N.E.2d at 54; *Clement*, 34 Ill. App. 3d at 577, 340 N.E.2d at 219.

11. *Hays*, 102 Ill. 2d at 316, 465 N.E.2d at 99. These events occurred the day after Hays was voluntarily admitted. Brief for Appellant at 9, *In re* Hays, 102 Ill. 2d 314, 465 N.E.2d 99 (1984). Approximately seven hours elapsed between the time Hays was restrained and medicated and his transfer to the state facility. *Id.* Hospital authorities testified that Hays' behavior was no different than on the nine previous occasions when he was a voluntary patient at Mercy Hospital. *Id.* These facts and Mercy Hospital's extensive experience with Hays tend to refute the state's argument that Hays could not be treated adequately at Mercy, and, therefore, needed to be transferred to a state facility. *Id.* at 14-15.

12. Section 3-601 specifies that any person may petition for emergency involuntary admission of another person. ILL. REV. STAT. ch. 91 1/2, § 3-601 (1983). To be subject to involuntary admission, a person must be considered reasonably dangerous to himself or others, or unable to care for himself and protect himself from harm. *Id.* at § 1-119.

13. The initial petition must contain a certificate stating specific acts and reasons which support the petition for involuntary admission. *Id.* at § 3-601. This section of the Code reflects the concern of the legislature that a wrongful commitment could be based upon improper grounds. *See Commission Report, supra* note 1, at 51 (possibility of wrongful commitment requires a detailed de-

private facility to a state mental health facility.[14] A psychiatrist at the state facility completed the second statutorily required certificate.[15]

The circuit court, pursuant to Code provisions, held a hearing within five days of the filing of the petition for involuntary commitment. At this hearing, the circuit court formally declared Hays to be a proper subject for involuntary admission, and ordered Hays involuntarily committed.[16] On appeal, the Appellate Court of the Fourth District reversed, holding that the circuit court's order was void because it lacked statutory authority. Although the appellate court stated that it was compelled to reverse on the basis of comity and consistency of authority, the court rejected the consistent rationale of three appellate court interpretations of the voluntary admission statute.[17]

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scription of acts or threats); Comment, *Developments in the Law: Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190, 1193-1203 (1974) (effects of involuntary commitment detailed) [hereinafter cited as *Developments in the Law*]. *See also* Vitek v. Jones, 445 U.S. 480, 564 (1980) (Marshall, J., dissenting) (involuntary commitment to a mental hospital can produce adverse social consequences); *In re* Stephenson, 67 Ill. 2d 544, 544-45, 367 N.E.2d 1273, 1274-75 (1977) (balancing important liberty interests of patient with responsibility to protect society).

14. *Hays*, 102 Ill. 2d at 316-17, 465 N.E.2d at 99. Hays was committed and transferred to a state mental health facility pursuant to the Code provisions for emergency involuntary admissions. *See* ILL. REV. STAT. ch. 91 1/2, § 3-605 (1983).

15. *Hays*, 102 Ill. 2d at 316-17, 465 N.E.2d at 99. Section 3-610 requires a psychiatrist to examine, within 24 hours, all persons admitted pursuant to emergency certification, and issue a second supporting certificate. ILL. REV. STAT. ch. 91 1/2, § 3-610 (1983). The psychiatrist must specify the clinical observations or facts which support his diagnosis of the necessity for involuntary admission. *Id.* at § 3-602.

16. *Hays*, 102 Ill. 2d at 316, 465 N.E.2d at 98.

17. *In re* Hays, 115 Ill. App. 3d 686, 689, 451 N.E.2d 9, 12 (1983), *aff'd*, 102 Ill. 2d 314, 465 N.E.2d 98 (1984). The *Hays* appellate court rejected the rationale of *In re* Meyer, 107 Ill. App. 3d 871, 875, 438 N.E.2d 639, 642-43 (1982) (during voluntary admittee's hospitalization, society is protected because the availability of discharge is obviated by the state's right to bring involuntary petition within five-day period); People v. Hill, 72 Ill. App. 3d 638, 641, 391 N.E.2d 51, 54 (1979) (trial court has no discretion to deny voluntary patients the right to request discharge); and *In re* Clement, 34 Ill. App. 3d 574, 576-77, 340 N.E.2d 217, 219 (1975) (Code guarantees right to leave in exchange for incidental infringement of personal liberty).

Although these cases may be distinguished because they interpreted former, analogous Code sections, the new section is a virtual re-enactment of its predecessor. Moreover, the legislature is presumed to have intended that a reenacted statute retains the previous judicial construction. For a discussion of the application of this presumption to the *Hays* supreme court opinion, see *infra* notes 55-57 and accompanying text.

Several other cases recognize the important public policy concerns of the Code. *See* People v. Rink, 97 Ill. 2d 533, 539, 455 N.E.2d 64, 67 (1983) (effect given to legislature's intent and policies); *In re* Stephenson, 67 Ill. 2d 544, 554, 367 N.E.2d 1273, 1276 (1977) (Code reflects concern for liberty interests of mentally ill, society's interest in protecting itself, and state's interest in protecting

The Illinois Supreme Court granted the state's petition for leave to appeal. The question presented for review was whether a petition for involuntary admission may be brought against a voluntarily admitted patient who had not made a request to be discharged.[18] The supreme court affirmed, holding that a voluntary patient has a statutory right to request a discharge at any time and, absent such a request, a petition for involuntary commitment may not be initiated.[19] The supreme court, however, did not adopt the appellate court's rejection of the rationale of the previous appellate courts' interpretations of the statute.[20]

The Illinois Supreme Court initially observed that Illinois appellate courts have consistently interpreted the voluntary admission statute to require a patient's request for discharge before involuntary commitment proceedings could be initiated against a voluntarily admitted patient.[21] The supreme court primarily based

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and caring for those unable to care for themselves); Montague v. George J. London Memorial Hosp., 78 Ill. App. 3d 298, 302-03, 396 N.E.2d 1289, 1293 (1979) (recognizing civil cause of action based on public policy concerns reflected in the voluntary patient's right to request discharge).

The *Hays* appellate court observed that the precedents placed too much weight on the patient's right to request discharge without taking into consideration the possibility that a person could actively avoid involuntary commitment and thereby present a danger to society. 115 Ill. App. 3d at 688, 451 N.E.2d at 11.

18. *Hays*, 102 Ill. 2d at 317, 465 N.E.2d at 99. Appeal was granted pursuant to Rule 315. ILL. REV. STAT. ch. 110A, § 315 (1983). This rule articulates the Illinois Supreme Court's discretionary review of appellate court decisions. *Id.* The reasons stated for granting discretionary review are: the general importance of the questions presented; the existence of a conflict between the appellate courts or the Illinois Supreme Court and the decision sought to be reviewed; the need for the exercise of the Illinois Supreme Court's supervisory authority; and the final or interlocutory character of the judgment. *Id.* In *Hays*, the Illinois Supreme Court did not articulate which of these reasons it relied on. *Hays*, 102 Ill. 2d at 314, 465 N.E.2d at 98.

There was no inconsistency in the appellate courts' holdings, but there was an inconsistency in the appellate courts' rationales and support of the public policy concerns of the legislature in enacting the voluntary admission statute. *Compare Hays*, 115 Ill. App. 3d at 688, 451 N.E.2d at 245 (majority rejects prior courts' rationale; dissent rejects the rationale of precedent, to do otherwise is to simply turn the mental institution over to the patients); *with Meyer*, 107 Ill. App. at 874, 438 N.E.2d at 642-43 (rationale based on legislature's encouraging voluntary admissions and statute incorporates state's interest in protecting society). Because the supreme court in *Hays* emphasized the public policy concerns of the legislature and the prior consistent appellate court cases, one could deduce that the importance of the public policy question and maintaining complete consistency of interpretation were the basis the court used for granting the appeal. *See also In re* Stephenson, 67 Ill. 2d at 550, 367 N.E.2d at 1274 (the issue is a constantly recurring one upon which judicial opinions diverge, its resolution will relieve existing uncertainties).

19. *Id.* at 319, 465 N.E.2d at 100.

20. *Id.* at 317, 465 N.E.2d at 99.

21. *Id.* The supreme court cited *In re* Meyer, 107 Ill. App. 3d 871, 438 N.E.2d 639 (1982) (absent notice of intent to leave, state has no authority to bring involuntary petition); People v. Hill, 72 Ill. App. 3d 638, 391 N.E.2d 51 (1979) (patient initially involuntarily committed, but later voluntarily admitted still retained

its decision upon *In re Clement*, which held that a voluntary patient had an unqualified right to request a discharge,[22] and upon Code provisions providing for the admission and discharge of adults in mental health facilities.[23] The court noted that section 3-403 of the Code established the right of the voluntary patient to obtain a discharge within five days of written notice.[24] The court further recognized that the voluntary admission statute required a voluntary patient who requests a discharge be released unless an involuntary petition is initiated against the patient within the five-day holding period.[25] Additionally, the court focused on the Code provisions regulating emergency involuntary admissions and found that those provisions did not make reference to proceedings against voluntary patients.[26] Because the only reference to the involuntary commitment of a voluntary patient was found in the section on voluntary admission, the court reasoned that the language of that section required that a voluntary patient's request for discharge must precede an involuntary petition brought against him.[27]

The *Hays* court's construction of the voluntary admission statute included a consideration of the legislative intent behind the statute.[28] The court noted that voluntary admission served an important therapeutic purpose because one who voluntarily undertakes therapy is more likely to be rehabilitated than one who is compelled to undertake therapy.[29] The court found that the statu-

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statutory right of a requested discharge despite fact that Hill was indicted for murder and found unfit for trial); and *In re* Clement, 34 Ill. App. 3d 574, 340 N.E.2d 217 (1975) (voluntary patient has unqualified right to request to leave). For a thorough discussion of these cases, see *infra* note 56 and accompanying text.

22. *Hays*, 102 Ill. 2d at 317-18, 465 N.E.2d at 99, *citing In re* Clement, 34 Ill. App. 3d 574, 340 N.E.2d 217 (1975).

23. *Id.* at 318-19, 465 N.E.2d at 99-100, *citing* ILL. REV. STAT. ch. 91 1/2, §§ 3-400 to 3-403, 3-601 to 3-602, 3-610 (1983).

24. *Hays*, 102 Ill. 2d at 318, 465 N.E.2d at 100. The application for voluntary admission must contain a statement of the patient's right to request discharge, and the facility must orally inform the patient during admission of this right. *Id.*, 465 N.E.2d at 99; *see* ILL. REV. STAT. ch. 91 1/2, § 3-401 (1983).

25. *Hays*, 102 Ill. 2d at 318, 465 N.E.2d at 100.

26. *Hays*, 102 Ill. 2d at 319, 465 N.E.2d at 100.

27. *Id.*

28. *Id.* The *Hays* court noted that the rights given voluntarily admitted patients reflected the legislature's intent to encourage voluntary admission. *Id.* at 320, 465 N.E.2d at 100.

29. *Id.* The medical community has recognized that forced hospitalization renders effective treatment impossible, and that motivational benefits are implicit in voluntary admission programs because the patient desires treatment and is receptive to therapy. *Mental Health Law Project, Legal Issues in State Mental Health Care: Proposals for Change*, 2 MENTAL DISABILITY L. REP. 57, 67 (July-August 1977) (primary objective is to encourage voluntary admission and its attendant benefits) [hereinafter cited as *Mental Health Law Project*]; Gilboy and Schmidt, *"Voluntary" Hospitalization of the Mentally Ill*, 66 NW. U. L. REV. 429, 429-31 (1971) (legal and medical authorities agree on therapeutic value

tory right of a voluntary patient to request a discharge indicated a legislative intent to encourage voluntary admissions.[30] The court also found that section 3-403's five-day holding period in which to initiate an involuntary petition reflected the legislature's concern in protecting the public from unrestrained, unilateral patient discharge.[31]

In concluding its analysis, the *Hays* court identified a gap in the Code's transfer provisions.[32] Although the Code provides for the transfer of an involuntary patient between state mental health facilities,[33] it does not establish procedures by which a private hospital may transfer a deteriorated patient who is unable to request a discharge.[34] The court observed, however, that a private hospital would have to release a deteriorated, voluntary patient to public health officials who could then institute involuntary proceedings.[35] The court reasoned that if the legislature determines this procedure is inadequate, it could enact legislation to bridge the gap in the Code's transfer provisions.[36] The court refused to construe section 3-403 narrowly because such a construction would deny the voluntarily admitted mental health patient his right to request discharge when his condition has so deteriorated as to preclude him from re-

of voluntary admission). The availability of voluntary hospitalization also increases the likelihood that a person will seek treatment early, thus increasing his chance of recovery. *E.g.*, National Institute of Mental Health, Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill, Commentary at 19 (Public Health Service Pub. No. 51 1952),*reprinted in* THE MENTALLY DISABLED AND THE LAW 454 (S. Brakel & R. Rock eds., rev. ed. 1971). Early treatment usually involves shorter hospitalization, thus reducing costs of county and state hospitalization. *Id.*

30. *Hays*, 102 Ill. 2d at 320, 465 N.E.2d at 100. The Commission also noted the benefits of voluntary admission, and further recommended that the legislature reduce the statutory holding period from five days to three days. *Commission Report*, *supra* note 1, at 41-42.

31. *Hays*, 102 Ill. 2d at 320, 465 N.E.2d at 100. Involuntary commitment is to be initiated when a voluntary patient is a danger to himself or others. Thus, the state may bring an involuntary petition within the five-day holding period. In re-enacting section 3-403, the legislature did not follow the Commission's recommendation to reduce the holding period to three days. *See Commission Report*, *supra* note 1, at 41-42.

32. *Hays*, 102 Ill. 2d at 320-21, 465 N.E.2d at 101.

33. *Id.* Transfer of involuntary patients, when deemed clinically advisable, is permissible. ILL. REV. STAT. ch. 91 1/2, §§ 3-908 to 3-910 (1983).

34. *Hays*, 102 Ill. 2d at 320-21, 465 N.E.2d at 101.

35. *Id.*

36. *Id.* at 321, 465 N.E.2d at 101. There is a persistent omission in the Code regarding the procedures a private hospital should follow when a voluntarily admitted patient deteriorates and, consequently, needs to be transferred to a facility which is adequately equipped to meet his needs. The Code merely specifies the procedures for a *state* facility to follow in this situation. ILL. REV. STAT. ch. 91 1/2, §§ 3-908 to 3-910 (1983). For an analysis of how this omission should be interpreted, see *infra* notes 58-66 and accompanying text.

questing a discharge and thus would be contrary to the import of section 3-403.

The supreme court's refusal to deny the voluntary patient his right to request discharge by narrowly construing section 3-403 is proper for three reasons. First, the statutory history of section 3-403 supports the court's interpretation.[37] Second, a fundamental rule of statutory construction is that virtual re-enactment of a statute which has been previously construed, carries a presumption that the legislature intended to adopt that judicial construction.[38] This rule is applicable to *Hays* because three appellate courts had interpreted the Code's voluntary admission section to require a request for discharge before an involuntary petition could be filed against a voluntary patient, and the legislature subsequently re-enacted the statute without expressing any objection to the previous constructions. Finally, to fill the transfer gap in the Code, the legislature, rather than the courts, is in a better position to balance the needs of the patient, the state, and private facilities.[39] The *Hays* court's interpretation, therefore, reflects judicial deference to legislative judgment in protecting the statutorily-articulated rights of all mental health patients.

The Illinois Supreme Court found it unnecessary to interpret section 3-403 narrowly in order to protect the public or the patient because the statutory provision adequately incorporated this protection.[40] The legislative history of section 3-403 supports this contention.[41] It demonstrates that section 3-403 is based on the state's responsibilities under its *parens patriae*[42] and police powers.[43]

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37. *See infra* notes 40-52 and accompanying text.

38. *See infra* notes 55-57 and accompanying text.

39. *See infra* notes 58-66 and accompanying text.

40. *Hays*, 102 Ill. 2d at 320, 465 N.E.2d at 100-101. For a discussion of the state's arguments for a re-interpretation of the statute, see *supra* note 10.

41. For a discussion of the legislative history of section 3-403, see *infra* notes 46 & 51.

42. The state's authority to enact and enforce mental health codes is partially derived from the *parens patriae* doctrine. *See* Addington v. Texas, 441 U.S. 418, 426 (1979) (states have interest under *parens patriae* to provide care for those unable to care for themselves); *Stephenson*, 67 Ill. 2d at 554, 367 N.E.2d at 1276 (society obligated to care for those unable to care for themselves). The use of this power to detain the mentally ill in order to rehabilitate them was first recorded in 1845. *See Developments in the Law*, *supra* note 13, at 1208. When the state uses its *parens patriae* power to protect citizens who are unable to care for themselves, it is necessary that procedures for commitment and treatment meet both due process requirements and the guarantee of effective treatment. *E.g.*, Youngberg v. Romeo, 457 U.S. 307 (1982) (under fourteenth amendment, state must provide reasonably safe conditions, minimally adequate habilitation, and effective treatment for the involuntarily committed). This concern was reflected in the goals and concerns of the Commission's 1979 revisions and recommendations. *See Commission Report*, *supra* note 1, at 1.

43. The police power of the state is an inherent, sovereign power that is applied to protect the public health, safety, welfare, and morals. O'Connor v.

Early in the history of mental health codes, states used their *parens patriae* power to authorize involuntary confinement of the mentally ill for the patient's benefit.[44] Responding to medical authority which recognized the benefits of voluntary admissions over involuntary admissions, several legislatures decided to fulfill their *parens patriae* responsibilities by enacting voluntary admissions statutes.[45] Since 1945, the Illinois legislature has recognized the medical advantages of voluntary admission and has promoted that procedure by granting voluntary patients the right to request a discharge before involuntary commitment, and its attendant stigma, can occur.[46] Fewer persons will apply for psychiatric treatment if their right to request discharge and to be released may be denied

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Donaldson, 422 U.S. 563, 582-83 (1975) (Burger, C.J., concurring). Involuntary commitment under the police power involves a weighing of such interests as the protection of the public, the curtailment of liberty, the invasions of privacy, the disruption of familial, social and economic activities, and the loss of self-confidence or self-depreciation. *See Developments in the Law*, *supra* note 13, at 1200; Beis, *supra* note 2, at 81. Benefits of involuntary commitment include regulation of the patient's daily routine so that the patient can focus on his problem, relief from symptoms through medication, and administration of other assistance. *See Mental Health Law Project*, *supra* note 29, at 81-82.

44. *See generally Developments in the Law*, *supra* note 13, at 1207-22 (*parens patriae* provided for the involuntary commitment of mentally ill); Comment, *Mental Health Law—Temporary Detention of "Voluntary" Patients by Hospital Authorities: Due Process Issues*, 12 N.M. L. REV. 791, 791 (1982) (compulsory hospitalization justified on sovereign's responsibility to care for the disabled).

45. *See In re* Ballay, 482 F.2d 648, 660-64 (D.C. Cir. 1973) (legislative objective was to encourage voluntary admission); Appeal of Niccoli, 472 Pa. 389, 399, 372 A.2d 749, 854 (1977) (advantages of voluntary admission); Beis, *supra* note 2, at 50-55 (voluntary admission far more beneficial); Gilboy & Schmidt, *supra* note 29, at 429-30 (voluntary admission extremely desirable from medical viewpoint); *Developments in the Law*, *supra* note 13, at 1399 (voluntary therapy more likely to lead to rehabilitation); Comment, *supra* note 44, at 791-94 (voluntary hospitalization important for medical and societal reasons).

Most states have provisions for discharge of voluntarily admitted patients. *See, e.g.*, ARIZ. REV. STAT. ANN. § 36-519 (1982) (voluntary admission discharge within 24 hours of request); CAL. WELF. & INST. CODE § 6000 (West 1983) (inpatient may leave at any time); D.C. CODE ANN. § 21-512 (1982) (discharge of voluntary patient within 48 hours); PA. STAT. ANN. tit. 50 § 7206(a) (Purdon 1982) (release within 72 hours).

46. *Commission Report*, *supra* note 1, at 41. In 1945, Illinois allowed a fifteen day detention after a voluntary patient requested discharge. *Id.* This was reduced in 1963 to ten days and subsequently in 1967 to five days to promote voluntary admissions. *Id.*

In *Montague*, the appellate court recognized a civil cause of action for violation of the statutory right to request discharge. 78 Ill. App. 3d at 303, 396 N.E.2d at 1293. Citing the Supreme Court's reasoning, in *Stephenson*, 67 Ill. 2d at 544, 367 N.E.2d at 1273, that the code adequately balances the interests of the mentally ill patient and society, the appellate court found that the public policy concerns reflected in the Code formed a sufficient basis upon which to establish a civil action for violation of the right to request discharge. *Montague*, 78 Ill. App. 3d at 301-03, 396 N.E.2d at 1292-93. Specifically, it held that to do otherwise "would ignore the underlying public policy and disregard the clear legislative intent to guarantee a voluntary patient a right to request discharge." *Id.*

and involuntary hospitalization imposed.[47] If the supreme court had construed the statute narrowly to allow the involuntary commitment of deteriorated patients prior to their requesting discharge, it would have ignored the clear legislative policy to promote voluntary admissions and would have advised all voluntary patients that their statutory right was transient.

The legislative history of the voluntary admission statute also indicates that the legislature fulfilled its police power responsibility of protecting the public from dangerous mental patients.[48] The police power is used to protect either the public or the individual from harm. The police power may be exercised either to involuntarily commit an individual or to detain a voluntary patient.[49] Section 3-403 executes the state's police power responsibility by fixing a five-day holding period of a voluntary patient after he requests a discharge.[50] A proposed revision to the 1979 Code recommended reducing this period to three days.[51] A three-day holding period would reduce the deterrent effect a holding period has on voluntary admissions. The legislature's re-enactment of the five-day period, however, reflects an intention to fairly balance the often conflicting responsibilities of promoting the benefits of voluntary admission and of protecting the public from possible harm.

In its appeal to the supreme court, the state argued that section 3-403 should be narrowly construed in order to protect the public from potentially harmful patients. The Illinois Supreme Court rejected this argument, however, finding that the legislature had adequately provided for this protection with the five-day holding period in section 3-403.[52] The court's holding is appropriate because a construction more favorable to the state would operate to abrogate the legislature's balancing of the state's dual *parens patriae* and police power responsibilities.

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47. *Niccoli*, 472 Pa. at 400, 372 A.2d at 754.

48. For a discussion of the state's responsibilities under its police power, see *supra* note 43.

49. *See* ILL. REV. STAT. ch 91 1/2, § 3-403 (1983) (five-day holding period of voluntary patient); *Id.* at § 119 (person subject to involuntary admission must be danger to self or society).

50. *See id.* § 3-403.

51. The Commission recommended reduction to three days because it would reduce the statutory deterrent of the holding period and still provide sufficient time to determine if involuntary commitment was necessary. *Commission Report*, *supra* note 1, at 42. Other states have shorter holding periods or require immediate release of a voluntary patient. *See* CAL. WELF. & INST. CODE § 6000 (Deering 1983) (immediate release); MINN. STAT. ANN. § 253A.03 (West 1983) (free to leave within 12 hours); D.C. CODE ANN. § 21-512 (1982) (discharge within 48 hours).

52. ILL. REV. STAT. ch. 91 1/2, § 3-403 (1983). The court stated that the public must be protected from dangerous, mentally ill persons. *Hays*, 102 Ill. 2d at 320, 465 N.E.2d at 100. The court stated that the five-day holding period adequately protected the public. *Id.*, 465 N.E.2d at 100-01.

The Illinois Supreme Court's reasoning in *Union Electric Co. v. Illinois Commerce Commission*[53] also supports the *Hays* court's interpretation that section 3-403 assures all voluntary patients that they will not be involuntarily committed absent a request for discharge.[54] In *Union Electric*, the Illinois Supreme Court applied a basic rule of statutory construction and stated that re-enactment of a statute which had been judicially construed was, in effect, a legislative adoption of that construction.[55] This rule of statutory construction is applicable to *Hays* because of several Illinois appellate court decisions. According to these decisions, section 3-403 establishes that there are no limitations other than the five-day holding period upon the voluntary patient's right to request discharge.[56] In

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53. 77 Ill. 2d 364, 396 N.E.2d 510 (1979).

54. *Hays*, 102 Ill. 2d at 319, 465 N.E.2d at 100. The court reasoned that the involuntary provision did not make reference to proceedings against voluntary patients. *Id.*, 465 N.E.2d at 100. The only reference was found in the voluntary provisions. *Id.* Examining the voluntary provision, the court found its language clear and concise in requiring that an involuntary petition be preceded by a request for discharge. *Id. See also Clement*, 34 Ill. App. 3d at 576, 340 N.E.2d at 219 (specifying procedures for commitment of voluntary patients).

55. 77 Ill. 2d at 380, 396 N.E.2d at 518. The *Union Electric* court stated that this presumption applied unless the legislature's re-enactment displayed a contrary intent. *Id. See also* Stryker v. State Farm Mut. Auto. Ins., 74 Ill. 2d 507, 513, 386 N.E.2d 36, 38 (1978) (re-enactment raises presumption of legislative adoption of judicial construction).

The *Union Electric* court cited several cases which had previously construed the statute, and concluded that the legislature's repeated re-enactments and amendments had not abrogated the previous constructions. *Union Elec. Co.*, 77 Ill. 2d at 380, 396 N.E.2d at 517-18. Therefore, for the court to abandon this construction, would be a usurpation of legislative power. *Id.* at 381, 396 N.E.2d at 518. A similar effect would occur if the court interpreted the voluntary admission statute to allow involuntary commitment before a patient requests discharge.

56. *See Clement*, 34 Ill. App. 3d at 574, 340 N.E.2d at 217. The Code guarantees that a voluntary patient's status will not be changed to involuntary unless he first requests discharge. The guarantee was first enunciated in *Clement*. *Id.* at 577, 340 N.E.2d at 219. Clement was a voluntarily admitted patient whose condition so deteriorated that daily restraints and medication were necessary. *Id.*, 340 N.E.2d at 218. A review committee decided that a transfer to a more structured facility would benefit Clement. *Id.* An involuntary petition was filed because it was possible that Clement would request a discharge. *Id.* at 575, 340 N.E.2d at 218. The court recognized the severe deterioration of the patient, but held that the statute must be strictly complied with, stating that the patient's right to request discharge was the "focal point of his voluntary status." *Id.* at 577, 340 N.E.2d at 219. The court reasoned that in exchange for any incidental infringement on a patient's personal liberty, the state guaranteed a voluntary patient the right to request discharge. *Id.*

The second relevant appellate court decision which considered a voluntary patient's right to request discharge was People v. Hill, 72 Ill. App. 3d 638, 391 N.E.2d 51 (1979). Hill, a voluntary admittee, was charged with a crime. The state argued that he was not the type of person the legislature intended to encourage to be voluntarily admitted. *Id.*, 391 N.E.2d at 53. Relying on *Clement*, the court interpreted section 5-3, now codified at section 3-403, to mandate that a request of discharge precede involuntary petitions against voluntary patients. 72 Ill. App. 3d at 641, 391 N.E.2d at 54. Because the statute allowed five days for

addition, these decisions support the proposition that the legislature intended to adopt such a construction when it re-enacted the voluntary admission section of the Code. Because the legislature did not amend the voluntary admissions statute to reflect a contrary intention or objection to these previous court constructions,[57] the presumption of legislative adoption of those judicial constructions supports the *Hays* court's strict interpretation.

The *Hays* court found that the Code did not specify procedures for the transfer of a voluntary patient from a private facility to a state facility when the patient's health renders him incapable of requesting a transfer or a discharge.[58] The court noted that a private facility may release the patient to public health authorities who then may initiate an involuntary commitment petition.[59] Because the Code is silent concerning the procedures for the transfer of a deteriorated patient from a *private* hospital, the court correctly ruled that the Code section regulating the transfer of involuntary and voluntary patients between *state* facilities[60] was not applicable to the facts in *Hays*. The court was proper in not construing the statute to deny a voluntary patient the right to request discharge merely because of this transfer gap.

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the state to bring an involuntary petition to prevent Hill's release, the *Hill* court rejected the state's argument that involuntary commitment was necessary to protect society. *Id.* at 642, 391 N.E.2d at 54. This decision demonstrates that the voluntary admissions provisions effectively balance the state's responsibility to protect society against the benefits of voluntary admission.

A third appellate court case which strictly interpreted a voluntary patient's request for discharge was *In re* Meyer, 107 Ill. App. 3d 871, 438 N.E.2d 639 (1982). In *Meyer*, the state argued that the deterioration of the patient's condition and the possibility that the patient might request discharge warranted involuntary commitment prior to the patient's request for discharge. *Id.* at 872, 438 N.E.2d at 641. The court rejected this argument and offered two reasons in support of limiting involuntary petitions against voluntary patients. *Id.* at 874-75, 438 N.E.2d at 642. First, the court emphasized the benefits of encouraging voluntary admissions. *Id.* Second, the court reasoned that the state's interest in protecting society was fully incorporated in the Code because the state had a right to initiate involuntary proceedings within the statutory five-day period. *Id.*, 438 N.E.2d at 642-43.

57. *Compare* ILL. REV. STAT. ch. 91 1/2, § 3-403 (1983) (effective January 1, 1979, the statute provides that: "a voluntary patient shall be allowed to be discharged . . . not to exceed five days . . . after he gives . . . written notice of his desire to leave . . . unless within the 5 day period a petition and 2 certificates . . . are filed with the court"); *with* ILL. REV. STAT. ch. 91 1/2, § 5-3 (repealed 1969): "Each voluntary admittee shall be allowed to leave the hospital within 5 days . . . after he gives . . . written notice of his desire to leave . . . unless within said five days a petition and the certificates of two examining physicians . . . are filed with the court"). It is apparent that the more recent statute is a virtual re-enactment of the earlier one except for minor differences in word choice.

58. 102 Ill. 2d at 320, 465 N.E.2d at 101.

59. *Id.*

60. *See* ILL. REV. STAT. ch. 91 1/2, §§ 3-908 to 3-910 (1983).

The Code's transfer procedure for involuntary patients was enacted to meet the needs of both state facilities and involuntary patients,[61] incorporating a legislative intent to protect the involuntary patient in a state facility from transfers that are inconsistent with his treatment needs.[62] The provision also authorizes an involuntary patient to petition for transfer,[63] and requires an administrative hearing for a patient who objects to a transfer.[64] A Code provision which would provide for the transfer of a voluntary patient from a private hospital to a state facility should balance the state's concerns and policies, the voluntary patient's rights and treatment needs, and the needs of the private facility.[65] The legislature is the proper authority to bridge this statutory oversight.[66] A construc-

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61. *Commission Report, supra* note 1, at 72. One major concern of the Illinois legislature was state transfer policies. *Id.* at 73. State facilities are divided into short-term and long-term facilities. Formerly, if a patient did not improve after 60 days, he was transferred to a long-term facility for extended treatment. *Id.* The transfer procedure was challenged on the grounds that a patient must have a hearing and the state must justify its action before a transfer could proceed. *Id.* The Commission's recommendation requiring a stricter standard which emphasized the patient's needs over the state facility's needs was adopted. *Id.* at 72-73. *See also* Johnson v. Brelje, 701 F.2d 1201, 1210 (7th Cir. 1981) (no transfer unless individualized finding that transfer was consistent with treatment needs); *Clement*, 34 Ill. App. 3d at 577, 340 N.E.2d at 219-20 (state cannot involuntarily commit patient simply to transfer).

62. *See* ILL. REV. STAT. ch. 91 1/2, § 3-908 (1983); *See also Commission Report, supra* note 1, at 72. The Commission emphasized that a primary objective of the transfer provisions was that the transfer be consistent with the patient's needs, and that the decision to transfer should favor transfer to a facility close to the patient's family and friends. *Commission Report, supra* note 1, at 72.

63. ILL. REV. STAT. ch. 91 1/2, § 3-909 (1983). A private hospital may petition for transfer of a patient hospitalized by court order. *Id.* The statute specifically precludes court-ordered hospitalization under this section if the original hospitalization was not pursuant to a court hearing, *id.*, thereby explicitly excluding voluntary patients from section 3-909.

64. *Id.* at § 3-910(d). This section specifically declares that the state has the burden of proving that the transfer meets the treatment needs of the patient. *Id.*

65. Private hospitals are administratively different from state facilities and are generally designed and staffed for short-term treatment needs. Moreover, they are not generally equipped to protect either the patient or hospital personnel from potentially violent patients. These facts and the patient's rights and needs would need to be incorporated into a transfer section for voluntary patients in private hospitals. *See generally Union Elec. Co.*, 77 Ill. 2d at 381, 396 N.E.2d at 518 (legislature is proper authority to change statute and balance needs); *Stephenson*, 67 Ill. 2d at 544, 367 N.E.2d at 1273 (legislature has capacity to balance needs of all concerned).

66. The Illinois Supreme Court has previously recognized that the legislature incorporated the needs of the patient, the state, and the facility into the Code. In *Stephenson*, while reviewing the appropriate standard for civil commitment, the court analyzed the extensive statutory procedures in the Code designed to prevent unnecessary commitment. 67 Ill. 2d at 544, 367 N.E.2d at 1273. For example, the court reviewed the requirements that the patient be informed of his rights, such as the right to a jury trial, the right to an attorney, the requirement that incompetency and "in need of mental treatment" be separate considerations, and that the patient have the right to petition for discharge.

tion which denies the voluntary patient the right to request discharge neither addresses these concerns nor adequately fills this statutory transfer gap and would be inconsistent with the patient-oriented goals of the Code.

The *Hays* opinion adequately protects a voluntary patient's right to request a discharge prior to the commencement of involuntary commitment. The importance of the *Hays* opinion, however, lies in its application to other statutorily-prescribed rights.[67] With the *Hays* opinion as precedent, the rights of the mentally ill and developmentally disabled, enumerated in the Code's bill of rights and in other sections of the Code, will be judicially and statutorily protected in a strict manner. Those rights which entail major consequences, such as the statutorily guaranteed right of a patient to be provided with humane care and services,[68] will be given zealous

Id. at 550-51, 367 N.E.2d at 1275. The court concluded that the Code operates to protect the patient's fundamental liberty interests, protects the interests of society, and preserves the state's obligation to protect and care for those unable to care for themselves. *Id.* at 554, 367 N.E.2d at 1267.

67. The Code's bill of rights guarantees adequate and humane services in the least restrictive environment; ILL. REV. STAT. ch. 91 1/2, § 2-102 (1983); provides for the possession and use of personal property; *Id.* at § 2-104; the free access to communications; *Id.* at § 2-103; the right to refuse medication unless it is necessary to prevent harm to the patient or others; *Id.* at § 2-107; the freedom from presumption of incompetence; *Id.* at § 2-101; right to the use of one's own money; *Id.* at § 2-105; the right to work for compensation; *Id.* at § 2-106; and the right to be free from restraint and seclusion; *Id.* at § 2-108, § 2-109. See *Commission Report*, *supra* note 1, at 21-33 for a thorough discussion of the Commission's comments on the need to statutorily guarantee these rights. *See also* Dixon Ass'n for Retarded Citizens v. Thompson, 91 Ill. 2d 581, 528-30, 440 N.E.2d 117, 119 (1982) (statutory rights of patients overlap constitutional rights).

68. ILL. REV. STAT. ch. 91 1/2, § 2-102 (1983). This statutory right specifies that each recipient have an individually tailored service plan, that the plan be periodically reviewed with the recipient, and that a qualified professional oversee the implementation of the plan. *Id.* In Dixon Ass'n for Retarded Citizens v. Thompson, 91 Ill. 2d 518, 440 N.E.2d 117 (1982), the Illinois Supreme Court held that the adequacy of the care and services required by this section should be determined in light of what is reasonable under the circumstances of the case. *Id.* at 530, 440 N.E.2d at 123. The court held that a professional's judgment as to the adequacy of the care should be given deference. *Id.* at 535, 440 N.E.2d at 125. The decision of the professional will be presumptively valid, and overruled only when it departs so substantially from accepted professional judgment to demonstrate that it was not based on a professional standard. *Id.* Because *Dixon* held that the physician's judgment is presumptively valid, one interpretation of section 2-102 could be that if a physician determined a patient did not need an individually tailored service plan his judgment would be presumptively valid. However, when one incorporates the *Hays* court's requirement that the articulated statutory procedures be strictly followed this result could not occur. *Hays* would require that *every* patient have an individually tailored service plan and that the *Dixon* holding was only applicable to the specific contents of each plan. Thus, all patients are guaranteed that they will have a personal service plan for habilitation or rehabilitation and constructions allowing the circumstances of the case to obviate this requirement should not occur. For a discussion of *Hays'* effect on the patient's right to refuse treatment, see Comment, *Pathway*

protection. The *Hays* opinion will serve as a guide to courts that judicial constructions which deny a patient his articulated rights are not the proper method of rectifying particular procedural problems or Code oversights in the mental health field. The *Hays* opinion's clear message is that the legislature has the responsibility to bridge any statutory oversights and the court has the responsibility to protect the patient's statutorily articulated rights.

The *Hays* court's strict interpretation of section 3-403 granting a voluntary patient a right to request discharge before involuntary commitment is supported by both the legislative intent of section 3-403 and by fundamental rules of statutory construction. The *Hays* court recognized that the legislature is the proper governmental body to balance the needs of both the state and the mental health patient. The patient-oriented goals and statutory rights of the 1979 Code, therefore, are both statutorily and judicially protected. Statutory gaps in the Code which require legislative action will be given judicial recognition without abrogating the patient's rights under the guise of protecting society. Consequently, the real significance of the *Hays* opinion lies in creating precedent which does not allow legislative oversight in the Code to defeat the legislative goal of ensuring mental health patients basic human rights.

Gloria Longest Westover

Through the Psychotropic Jungle: The Right to Refuse Treatment in Illinois, 18 J. MAR. L. REV. 407 (1985).