

**OPINION  
70-216**

September 25, 1970        (OPINION)

Mr. Bernard Larsen

Director, Commission on Alcoholism

State Capitol

RE: Mental Health - Commitment - Procedure

This is in reply to your letter of September 22, 1970, in which you state the following facts and questions:

We frequently are asked about the correct procedure for having an alcoholic committed for treatment and also whether or not an alcoholic can be committed to a facility other than the State Hospital such as the Heartview Foundation in Mandan.

There also seems to be considerable discrepancy in the way commitment procedures are being handled by various county judges. I would appreciate it very much if you will give us your opinion on the following questions

1. What is the proper procedure for initiating a commitment?
2. Who is eligible to initiate a commitment?
3. Is the county judge obligated to call a hearing of the Mental Health Board if someone wishes to initiate a commitment? (There have been a number of incidences where a wife has gone to the county judge requesting to have her husband committed and the judge has refused to let her sign a complaint.)
4. Does a person being committed have any legal recourse such as suing the person or persons initiating a commitment?
5. Can the Mental Health Board make a commitment to a facility other than a state institution?"

Prior to 1969 there was no special provision providing for commitment of alcoholics to the State Hospital or other institution although in an opinion to Mr. Neil Thompson, Ramsey County State's Attorney, on January 25, 1961, this office held that a county mental health board could proceed under the provisions for the involuntary hospitalization for an individual whose mental health was found to be substantially impaired by the disease of alcoholism or drug addiction. In 1969 the Legislature amended certain provisions of chapter 25-03 of the North Dakota Century Code to specifically include within the involuntary hospitalization procedures an alcoholic or a drug addict as well as those persons who were mentally ill.

With this background, we will consider the questions in the order

presented.

1. The statutes specify the proper procedure for initiating a commitment. This procedure, specified by section 25-03-11, provides for the filing of a written application with the mental health board. Such application, unless waived by the county judge, must be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion he is mentally ill, an alcoholic or a drug addict and should be hospitalized, or a written statement by the applicant that the individual has refused to submit to or is unable to consent to an examination by a licensed physician.

There is also a provision for emergency commitment procedure in instances involving an individual who is mentally ill, an alcoholic or a drug addict and, because of his illness, is likely to injure himself or others if allowed to remain at liberty pending an examination. In such case, a health or police officer or a licensed physician may obtain the written or verbal consent of the county judge, or in his absence any member of the county mental health board, to apply to a hospital for his emergency admission. If neither the county judge nor a member of the county mental health board is available to give consent, a licensed physician, who has reason to believe that an individual is mentally ill, an alcoholic or a drug addict and because of his illness is likely to injure himself or others if allowed to remain at liberty pending an examination by written order, may direct an emergency admission to the State Hospital or to a private hospital. The head of the private hospital or the Superintendent of the State Hospital, as the case may be, must require an immediate examination of such person to be made; and if he determines that hospitalization is not warranted, he must immediately discharge the person. See section 25-03-08 of the North Dakota Century Code.

2. Section 25-03-11 provides that regular proceedings for the involuntary hospitalization of an individual may be commenced by a friend, relative, spouse, or guardian of the individual, or by a licensed physician, police officer, state's attorney, a health or public welfare officer, or the head of any public or private institution in which the individual may be.
3. Section 25-03-11 provides that as soon as practicable after notice of the commencement of proceedings is given or after determination that notice should be omitted, the mental health board is to appoint at least one licensed physician to examine the proposed patient and report to the board his findings as to the condition of the proposed patient and the need for his custody, care, or treatment in a mental hospital. If the report of the examiner shows the proposed patient is not mentally ill, an alcoholic or a drug addict, the mental health board, without taking any further action, may terminate the proceedings and dismiss the application;

otherwise, the board must fix a date for and give notice to the person designated of a hearing before the board. These provisions appear to be mandatory, at least with respect to the acceptance of an application; and we find no authority for the county judge to refuse an application.

I note in your question you use the term "complaint." That term is ordinarily reserved for criminal actions. The hospitalization of a person who is mentally ill, an alcoholic or a drug addict is not criminal in nature. I assume in the context used here the word "complaint" is intended to be synonymous with "application" and was intended to refer to proceedings for involuntary hospitalization as opposed to some criminal action which the wife might attempt to institute against her husband because of his condition.

4. Section 25-03-28 of the North Dakota Century Code provides:

25-03-08. UNWARRANTED HOSPITALIZATION OR DENIAL OF RIGHTS - PENALTIES. Any person who willfully and maliciously causes or conspires with or assists another to cause the unwarranted hospitalization of any individual under the provisions of this chapter, or the denial to any individual of any of the rights accorded to him under the provisions of this chapter, shall be punished by a fine of not exceeding one thousand dollars or by imprisonment of not more than one year, or by both such fine and imprisonment."

The Supreme Court of North Dakota has also held that a civil action will lie for malicious prosecution and without probable cause of a proceeding, the object of which is to have a person committed to the State Hospital. See Johnson v. Huhner, 33 N.W.2d. 268 (N.D. 1948). Therefore, it is possible for a person being committed to sign a criminal complaint or bring a legal action against the person or persons initiating a commitment. Whether such suits would be successful would, of course, depend upon the facts involved.

5. Under the emergency commitment procedure the person may be hospitalized in the State Hospital or a private hospital. Under the regular commitment procedure; i.e., application, hearing before the county mental health board, etc., the county mental health board has the authority to order hospitalization at the State Hospital or other suitable place. Presumably an institution such as Heartview would be a suitable place for a person deemed in need of treatment as an alcoholic because he is likely to injure others or himself if allowed to remain at large. However, whether Heartview would qualify as a "hospital" under the emergency commitment procedure involves facts not within our knowledge. We assume the term "hospital" as used in the statute means a licensed medical hospital as defined in chapter 23-16 of the North Dakota Century Code although this term is not entirely clear.

We further note that section 25-03-13(2) of the North Dakota Century Code provides that pending his removal to a hospital a patient taken into custody or ordered to be hospitalized may be detained in his home "or any other suitable facility" under such reasonable conditions as the mental health board may fix, but he shall not, except during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. Presumably a "suitable facility" could be Heartview in the case of alcoholics or drug addicts. We emphasize, however, that the provision is applicable only to temporary detention.

It thus appears that a person could be committed to Heartview for drug addiction or alcoholism under the regular commitment procedure. One problem does occur in this regard. Procedures for payment for care at the State Hospital are provided by statute. These statutes make no provision for costs of care at private institutions or hospitals. Therefore, we assume a private institution or hospital could refuse to accept a person committed thereto unless arrangements for the payments of cost of treatment had been made. In this regard, the county mental health board has no authority to make any payments to private institutions or to order any payment to private institutions. We assume, therefore, the county mental health board would not commit a person to a private institution unless there was some arrangement made for the payment of costs of treatment thereat.

As a general observation, it appears the Legislature, in providing for commitment of alcoholics and drug addicts, made no particular provisions for their care at institutions other than the State Hospital; and while it appears the county mental health board may commit an alcoholic or drug addict to an institution such as Heartview, there is no special provision relating thereto.

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Attorney General