

OPINION
63-31

December 6, 1963 (OPINION)

BOARD OF ADMINISTRATION

RE: State Hospital - Medical Treatment Determined by Superintendent
and Staff

This is in response to your request for an opinion on the question "whether or not a relative or guardian has the right to dictate the type of treatment given a patient at the State Hospital."

We are assuming that the patient in question is an "involuntary patient" - one who is committed to the State Hospital by proper authority and procedure such as judicial procedure or mental health board or as in some instances emergency procedure under chapter 25-03. Section 25-03-11(7)(a)(b) as pertaining to involuntary admissions or commitments to the State Hospital provides as follows:

7. If upon completion of the hearing and consideration of the record the mental health board finds that the proposed patient
 - a. Is mentally ill, and because of his illness is likely to injure others or himself if allowed to remain at liberty; or
 - b. Is in need of custody, care, or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization,

it shall order his hospitalization at the state hospital or other suitable place, or if it finds otherwise it shall dismiss the proceedings.* * *." (Emphasis supplied).

Under section 25-03-07 of the North Dakota Century Code "The superintendent of the state hospital shall, * * * receive therein for observation, diagnosis, care, and treatment any individual whose admission is applied for * * *" under the procedure set forth in chapter 25-03.

It is thus observed that a patient is committed for treatment and care and that the superintendent is required to receive such patient for treatment and care.

It is also noted that insane persons are considered wards of the state. (12 So.2d. 599, 162 So. 715 and 152 So. 207).

At the same time it is noted that the state owes a duty, as *parens patriae*, to protect such persons as well as the public. It is a two-way protection. (44 C.J.S. 49). This is a duty which evolved

from common law which still applies except as modified by statute.

The care and treatment referred to in the above sections means such as is recognized by the medical profession for the benefit and welfare of the patient and which has been proven to be beneficial and with the final objective of curing the patient and restoring him to a useful position in society. It also includes methods which have been recognized as acceptable by the medical profession in dealing with the mentally ill.

While all persons committed to the State Hospital are not deemed insane they nevertheless are considered incapable of taking care of themselves and as such the same rule applicable to the insane applies to them as to treatment and care.

This brings us to the real question involved, that is, who determines the treatment and care a patient is to receive. The State Hospital is headed and staffed by person who possess the necessary medical qualifications - such as doctors, physicians and psychiatrists.

The type of treatment and care rests with the medical professional persons who are entrusted and charged with this duty. Generally, one does not go to a plumber to have his eyes examined and treated - neither does one go to a doctor to have his plumbing checked and fixed. The answer is as simple as that just stated. One seeks help from the profession which is qualified in that particular field. If a blood relative or next of kin were permitted to dictate the treatment of a patient there would be no need to have the hospital staffed with competent qualified professional medical personnel. For that matter, there would exist very little reason or need for the hospital, except possibly for confinement and restraint purposes if the relative could dictate treatment to be given. The hospital is primarily established and maintained for treatment and care. Restraint is only one of the means to accomplish treatment and care, but is not an end or objective in itself.

The State Hospital, through its staff, is entrusted with the care and treatment and as such owes a duty to the patient. If the hospital or staff abuses a patient, it is a violation of law. Section 25-03-18 of the North Dakota Century Code provides in substance that every patient is entitled to care and treatment and to the extent that facilities, equipment and personnel are available to medical care and treatment in accordance with the highest standards accepted in medical practice. Any person who willfully abuses or neglects a patient is guilty of a misdemeanor and in addition thereto can be held liable for civil damages. This also applies to professional misconduct or neglect or malpractice.

It is thus observed that adequate protection is afforded the patient who is committed to the State Hospital for care and treatment.

We also note section 25-02-09 of the North Dakota Century Code which in substance provides that all patients shall be provided with equal care and treatment in accordance with the different degrees or conditions of mental and physical health. Provided, however, that if a relative or friend wishes special care or treatment for the patient, upon paying the additional cost for such special care or

treatment and if such care or treatment may be given without jeopardizing other patients, the same may be given or furnished.

In passing, we wish to note that subsection of section 25-03-11 of the North Dakota Century Code, in part, provides:

* * *No person who is being treated by prayer in the practice of religion of any well recognized church, sect, denomination or organization, shall be ordered detained or committed under the provisions of this chapter unless the county mental health board shall determine that he is or would likely become dangerous to himself or to the person or property of others, or unless, being an adult, he shall consent to such detention or commitment, or, being a minor, his parent or guardian having custody of his person shall consent thereto."

In reviewing the various statutes and law pertaining to care and treatment of mentally ill persons, we come to the inescapable conclusion that the State Hospital was established to provide care and treatment for the mentally ill with the objective of having them cured and restored to society to again resume their useful purpose and position.

It is, therefore, our opinion that the superintendent and his medical staff determine the medical treatment to be given a patient committed to the State Hospital.

It is our further opinion that the guardian, next of kin, or blood relative does not have the right to dictate to the medical staff of the hospital the type of treatment the patient is to receive.

If, however, the patient has a history of unfavorable reaction to certain treatment or medication, such history should be furnished to the medical staff so it can be used in determining the type of treatment to be given.

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