

**OPINION
68-128**

May 14, 1968 (OPINION)

Mr. Isak Hystad

Chairman

Board of Administration

RE: Mental Health - Transfer from State Hospital to State School - L

This is in response to the questions submitted to you by Dr. Charles C. Rand, Superintendent of the Grafton State School. In such letter, Dr. Rand sets forth that a young woman was committed to the State Hospital on March 14, 1958. The diagnosis given at the time was mental deficiency, moderate. On May 21, 1958, she was transported from the State Hospital to the Grafton State School by authority of the Jamestown Hospital and admitted to the Grafton State School under authority granted by the Board of Administration. On the same day the hospital records reflect that a young woman patient was discharged from the State Hospital at Jamestown.

Prior to the admission at the Grafton State School, correspondence from said school indicated that it would notify the State Hospital upon the occurrence of a vacancy and that the State School would accept said person if she were transferred.

Dr. Rand is concerned about his authority to accept such transfers and what legal effect such transfers have. He also asks for a ruling from this office as to legal conditions under which patients can be transferred to the Grafton State School, or under what conditions a patient may be admitted, and finally under what conditions a patient may be committed to the Grafton State School.

Dr. Rand advises that the young woman in question is contemplating marriage with a young man in Bismarck on or about June 8, 1968. He also advises that he has informed the parents of the girl that this is a problem which rests with the parents. In making such statement he is not commenting on the legality or the permissibility of such marriage.

Basically there are three (3) ways in which a person may be placed under the care and custody of the Grafton State School. One method is by voluntary admission. Such voluntary admission must meet all of the requirements set forth in section 25-04-05, as amended by the 1967 Legislature.

Another method is by commitment. Under the provisions of section 25-04-06, as amended in 1967, the court of jurisdiction must find that a child is (1) dependent and mentally deficient, (2) neglected and mentally deficient, or (3) delinquent and mentally deficient.

The third method is by transfer. Under the provisions of section 25-04-05.1, the patient may be transferred from any institution under the control of the superintendent to any state facility if it is

deemed to be in the best interest of the patient and if it is done in conformity with the policies of the Board of Administration. This section clearly indicates that the superintendent may transfer a patient between the Grafton State School and the San Haven State School.

From the examination of the various statutory provisions, it appears that unless a person has been committed to the Grafton State School such person is there on a voluntary basis and must be considered as such. All of the statutes relating to voluntary admissions would be applicable. It further appears that any person committed to the Grafton State School is placed under the jurisdiction of the school pursuant to the order of commitment.

As to this young woman, if the records of the State Hospital actually show that such person was discharged, the admission to the Grafton State School would have to be considered as a voluntary admission. It might be that the hospital improvidently treated it as a discharge for administrative purposes, whereas in fact it intended to accomplish a transfer, but nevertheless it would legally amount to a discharge.

Under the provisions of section 25-03-14, the State Hospital may transfer an involuntary patient to any other hospital or facility if the superintendent of the State Hospital believes that such transfer would be consistent with the medical needs of the patient. However, prior to a transfer, notice must be given to the patient's legal guardian, parent or spouse. If he or she does not have any or if unknown, then notice must be given to the next known relative or friend.

It appears that the attempted transfer of this young woman under the old provisions is questionable because the hospital records indicate a discharge, consequently the transfer and the admission to the Grafton State School takes on the color of a voluntary admission.

It is our opinion that the superintendent of the Grafton State School should admit only those patients who are asking for voluntary admission, provided they satisfy the requirements of section 25-04-05, as amended, or unless the individual was committed by the proper authority pursuant to the provisions of section 25-04-06, as amended, or unless the patient was committed to the State Hospital and is transferred to the Grafton State School where such transfer was accomplished pursuant to the provisions of section 25-03-14 of the North Dakota Century Code.

It appears that the young woman has been released. If it is found that she should not have been released, proceedings to commit can be instituted.

HELGI JOHANNESON

Attorney General