

**OPINION  
61-61**

January 23, 1961 (OPINION)

COUNTIES

RE: Mental Health Board - Involuntary Hospitalization -

Examination of Proposed Patient by Licensed Physician

In your letter of January 11, 1961, you ask for our views as to the procedure to be followed by the Mental Health Board of Burleigh County in an instance of involuntary hospitalization of an individual who may be mentally ill.

In the first place, it is well to bear in mind that chapter 25-03 of the North Dakota Revised Code of 1943 was amended by the 1957 Legislature, and now appears as chapter 25-03 in volume Four of the North Dakota Century Code. Section 25-03-11 of said Code deals particularly with involuntary hospitalization.

It would appear that two questions are raised in your letter, and they may be outlined as follows:

1. What are the legal requirements to institute proceedings for involuntary hospitalization of a proposed patient?

This question is answered by subsection 1 of section 25-03-11 which subsection reads as follows:

1. Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the mental health board 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. Any such application, unless waived by the county judge, shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill 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."

The language in this subsection is clear and unambiguous and should require no further comment except that it is plain that the County Judge may waive the filing of the accompanying certificate of a licensed physician who has previously examined the proposed patient.

Your second question deals with the medical examination of the proposed patient and who may make the same and when and where such examination is to be made.

The answer to this question is spelled out in subsection 3 of section 25-03-11 which reads as follows:

3. 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 shall appoint at least one licensed physician as an examiner who may or may not be a member of the county mental health board to examine the proposed patient and report to the board his findings as to the mental condition of the proposed patient and the need for his custody, care, or treatment in a mental hospital."

It appears clear to this office that the statute contemplates an examination of the proposed patient by at least one licensed physician before a hearing by the Mental Health Board is held. The physician may be a doctor member of the Mental Health Board or he may not be in the discretion of the Board. It appears also that more than one physician might be requested to participate in the examination if the Board deems it necessary. In any event, it seems clear to us that the proposed patient is entitled to this examination before he is summoned to appear before the Mental Health Board. The proposed patient is not required to submit to such an examination against his will but he must be given the opportunity to have the examination made. If he refuses, then the Board shall upon notice given as provided in subsection 2 order him to submit to such an examination.

As stated in subsection 4, "The examination shall be made at a hospital, or other medical facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's health."

As pointed out previously herein, this legislation is of comparatively recent origin, and it is our view that it is aimed at the convenience, well being, and health of the proposed patient rather than the execution of summary legal proceedings. This view is borne out by the fact that subsection 5 provides that if the examination by the designated examiner shows that the proposed patient is not mentally ill, the Mental Health Board may without taking any further action terminate the proceedings. Otherwise, a hearing must be held by the Board and notice given as set out in said subsection 5.

Subsection 6 goes into detail as to how the hearing shall be conducted. The conduct of the hearing is, of course familiar to you due to your long experience as County Judge.

Therefore, it is the opinion of this office that a condition precedent to the hearing before the Mental Health Board, the Board must appoint at least one licensed physician who may or may not be a member of the County Mental Health Board to examine the proposed patient and report to the Board his findings. Upon the filing of the physician's report, the Board may terminate the proceedings, or it may call a hearing in the case. This decision rests within the sound discretion of the Board as does the final determination of the matter as set forth in subsection 7 of section 25-03-11 of the North Dakota Century Code.

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