

Opinion No. 60-54

March 24, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Commission on Alcoholism 116 East De Vargas Street Santa Fe, New Mexico.
Attention: Fred M. Toler, Executive Director

QUESTION

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May the Commission on Alcoholism discharge a patient from the Rehabilitation Center without the approval of the committing court?

CONCLUSION

Yes.

OPINION

{*411} ANALYSIS

Section 46-12-7, N.M.S.A., 1953 Compilation, provides in part:

" . . . the court is authorized to direct that he (the patient) receive appropriate treatment as provided under the terms of this act (46-12-1 to 46-12-13), and may commit to the joint custody and control of said commission and the committing judge and state institution to which committed for a period of not less than four (4) days, nor more than three (3) years, any habitual drunkard, chronic alcoholic, any dipsomaniac, or any person who has been five (5) times convicted of intoxication in any court, or who is a person who has been legally determined to have lost the power of selfcontrol from the intemperate use of spirituous or intoxicating liquors."

A careful reading of this statute, construed together with the purpose of the entire act, indicates that the objective of such a commitment is for the purpose of receiving proper medical, institutional, advisory and rehabilitative treatment. We do not construe this section in a manner which would make the Rehabilitation Center a penal institution in any sense of the word. The commitment is for treatment only and does not constitute punishment.

The Commission on Alcoholism is charged with the duty of setting up a program of treatment and rehabilitation and the Commission alone is responsible for the standards of care and type of treatment available in their Rehabilitation Centers. We do not feel that it was the purpose of this section to permit a committing court, by virtue of a

commitment order, to override or alter the treatment for any particular patient prescribed by the Commission in the discharge of its duties.

That the Legislature intended the length of detention of the patient to be a matter purely and exclusively within the jurisdiction of the Commission is made clear by § 46-12-8 which reads as follows:

{*412} "Any person committed to the custody of the commission under section 7 of this act (46-12-7), may, **notwithstanding the terms of any order of commitment**, be permitted to go at large on probation and without custody or restraint, for such time and under such conditions as a majority of the commission shall judge best. **Persons placed in custody under any provision of this chapter, may be discharged by the commission**, pursuant to its regulations." (Emphasis supplied).

The clear meaning and intent of this section of the statute is to vest in the commission the right to discharge a patient notwithstanding the terms of any order of commitment. And it is the opinion of this office that the Commission may discharge a patient from its Rehabilitation Centers without the approval of the committing court. However, since the custody is joint, the court should be notified of the pending release of the patient so that the court may take such action in connection with the patient as it deems necessary or desirable.

By: B. J. Baggett

Assistant Attorney General