

INSANE PERSONS: Probate Court may compel alleged insane
EXAMINATION BY persons to submit to an examination by
PHYSICIANS: a physician following an application for
involuntary hospitalization.



June 17, 1957

Honorable James A. Cole
Prosecuting Attorney
Franklin County
Union, Missouri

Attention: Mr. Charles E. Hansen
Assistant Prosecuting Attorney

Dear Sir:

In your letter of May 3, you wrote as follows:

"Proceedings have been commenced by the husband of the proposed patient under Section 202.807. Notice thereof has been given to the proposed patient by the Sheriff. Two doctors were appointed to examine the proposed patient. The doctors have reported to the Judge that they are unable to examine the proposed patient, because upon their appearance at her residence, she locks herself in her room.

"The problem thus arises as to what power the Probate Judge has to cause her to submit to examination. Or can the Judge proceed with the hearing under Section 202.807(6), if the doctors report the proposed patient will not permit them to examine her.

"If the original petition in the case states that the proposed patient is in such condition that she is liable to cause injury to herself or others, could the Judge empower the Sheriff to detain the proposed patient in a suitable place, thereby making it

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possible to obtain an examination of the proposed patient. This would not comply with Section 202.800 because of the absence of a statement from a doctor, because none has been able to examine her, to determine if she is at the present time dangerous to herself,"

Section 202.807, RSMo Cum.Supp. 1955, it seems to us, contemplates an examination by two licensed physicians (in addition to the one whose certificate accompanies the application, if one does accompany it), before a judicial proceeding shall continue.

It certainly isn't clear what exactly was contemplated by the legislature in this section. In subsection 1 there is the provision that an application may state that the proposed patient has refused to submit to an examination. In subsection 3 there is a provision for the two court appointed physicians to examine. Apparently, as we have said, these two are to be appointed by the court even if one physician has examined the proposed patient prior to the application. Apparently, too, they are "to examine the proposed patient" whether he acquiesces or not.

We think the court has the inherent power to authorize the sheriff or other police officers to use the force necessary to aid the court appointed physicians in making the examination. We know of no rights of the individual that would be violated by compelling him to submit. Subsection 3 of Section 202.805, RSMo Cum. Supp. 1955, states that the probate court shall order "all preliminary acts required by section 202.807 be performed before the hearing." This indicates that the legislature apparently considered that the court could compel the proposed patient to be examined.

Section 202.820 states categorically that the patient shall be examined by the hospital staff as soon as practicable. Certainly, there the examination was contemplated by the legislature without any regard whatsoever to the patient's desires.

There are ample provisions throughout Chapter 202 for the individual to have an examination if he demands it or someone demands it for him following his commitment by means

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of the emergency procedures.

Enclosed is an opinion dated September 29, 1955, to the Honorable Gordon R. Boyer which shows that this office is of the opinion that the 1955 Act meets the objections the court had to the 1953 Act in the case of State v. Mullinax, 364 Mo. 858, 269 S. W. 2d 72.

CONCLUSION

It is our opinion that the probate court has the authority to compel an alleged mentally ill person to submit to an examination in a hearing to determine the truth regarding his illness following any application for his involuntary hospitalization.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Yours very truly,

John M. Dalton
Attorney General

RSN:hw:lc

1 enclosure