

December 27, 1955.

Robert J. Spratt, M.D.
 Superintendent
 Montana State Hospital
 Warm Springs, Montana

Dear Mr. Spratt:

You have submitted the following to my office for an official opinion:

"Since October, 1952, patients at the Montana State Hospital have been transferred to the Home for the Senile Aged at Lewistown, Montana. All of the transfers have been declared mentally incompetent, through Court action, and were under Court Order committing them to the Montana State Hospital, and have never been restored to capacity by Courts, nor formally discharged by the Board for the Insane. The question now presents itself as to the status of those transferred to the Home for the Senile Aged, and who are later readmitted to the Hospital from the Home for the Senile Aged."

Opinion No. 49

**Montana State Hospital — Home for
 Senile Aged Patients — Mental
 Incompetents — Transfers**

HELD: 1. The supervision of any person originally confined to the Montana State Hospital at Warm Springs, Montana, and later transferred to the Home for the Senile Aged, vests in the Superintendent of the Montana State Hospital at Warm Springs.

2. Should a person be originally committed to the Montana State Hospital at Warm Springs, Montana, and later transferred to the Home for the Senile Aged at Lewistown, Montana, the status of the person is not the status of a person on parole, but is merely that of a person who has been transferred from one department of the State of Montana to another department of the State of Montana. It is therefore not necessary to secure additional orders of commitment should this person again revert to such a state of mind that it is necessary for the subject to be readmitted to the Montana State Hospital at Warm Springs, Montana.

The specific question involved is whether or not it is necessary for a new Court Order of Confinement to be made when a patient has been transferred to the Montana State Home for the Senile Aged under the provisions of Section 38-1101, R.C.M., 1947, as enacted by Section 13, Chapter 206, Laws of 1949. It is partially questioned as to whether or not they are automatically discharged after spending two (2) years at the Home for the Senile Aged, under the provisions of Section 1, Chapter 149, Laws of 1953, and Section 12, Chapter 206, Laws of 1949.

Section 38-1108, R.C.M., 1947, as enacted by Section 13, Chapter 206, Laws of 1949, provides:

"Transfer of Patients From State Hospital to Home. The superintendent of the hospital at Warm Springs, Montana, is authorized to have examinations of the patients at that institution made by competent doctors for the purpose of ascertaining whether some patients now in confinement there should be transferred to the home, and if as a result of such examinations any persons are found to be senile, the state board of ex-

aminers of the state of Montana is authorized to order their transfer from the state hospital at Warm Springs, Montana, to the home."

It is to be noted that this section does not provide for what would be termed a parole of a patient, but only provides for a transfer of the patient from the State Hospital to the Home for the Senile Aged.

This, of course, was one of the compelling reasons for the building and maintenance of a Home for the Senile Aged. It was the policy of the State of Montana, as enacted by the Legislature, that those who are suffering from a senile condition should not be confined with those who are dangerously or violently insane. In order to achieve the ends of this legislation, Section 38-1108, supra, became the law in the State of Montana.

It is further noted that the persons who have been transferred to the Home for the Senile Aged, originally were committed to the Montana State Hospital at Warm Springs, Montana, under the provisions of Section 38-201, et seq., R.C.M., 1947, as amended and supplemented by the later enactments to the statutes of the State of Montana.

Therefore, the original authority to confine said person so committed runs to the Superintendent of the Montana State Hospital at Warm Springs, Montana. It is further to be noted that the Montana State Hospital at Warm Springs, Montana, and the Home for the Senile Aged, at Lewistown, Montana, are both departments of the State of Montana. Also, it is to be noted that the State Board of Examiners has original authority over all persons committed either to the State Hospital or to the Home for the Senile Aged. Upon a transfer of an individual from the State Hospital to the Home for the Senile Aged, the authority still resides and is retained in the State of Montana. By means of a transfer, this authority is never divested.

It would serve no useful purpose to have a person who has been transferred from the State Hospital to the Home for the Senile Aged re-committed under Court Order to the Montana State Hospital should they

become violently or dangerously insane.

It is therefore my opinion that the supervision of any person originally confined to the Montana State Hospital at Warm Springs, Montana, and later transferred to the Home for the Senile Aged, vests in the Superintendent of the Montana State Hospital at Warm Springs.

It is further my opinion that should a person be originally committed to the Montana State Hospital at Warm Springs, Montana, and later transferred to the Home for the Senile Aged, at Lewistown, Montana, the status of the person is not the status of a person on parole, but is merely that of a person who has been transferred from one department of the State of Montana to another department of the State of Montana, and it is therefore not necessary to secure additional orders of commitment should this person again revert to such a state of mind that it is necessary for the subject to be readmitted to the Montana State Hospital at Warm Springs, Montana.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.