

Office of the Attorney General  
State of North Dakota

Opinion No. 86-27

Date Issued: September 24, 1986

Requested by: John Graham  
Executive Director  
Department of Human Services

--QUESTION PRESENTED--

Whether N.D.C.C. Ch. 50-25.1 gives the state the authority to pursue legal remedies, including the initiation of court proceedings, necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that N.D.C.C. Ch. 50-25.1 gives the state the authority to pursue legal remedies, including the initiation of court proceedings, necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

--ANALYSIS--

N.D.C.C. Ch. 50-25.1 provides for a process to protect the health and welfare of children by encouraging the reporting of suspected abuse or neglect of children and the provision of protection and treatment services for abused and neglected children. The process includes mandated reporting by 'any physician, nurse . . . or any other medical or mental health professional' of suspected abuse or neglect of a child. N.D.C.C. § 50-25.1-03(1). The process requires investigation of any report of child abuse or neglect. N.D.C.C. § 50-25.1-05. If probable cause exists to believe that child abuse or neglect is indicated, a written report is to be given to the juvenile court having jurisdiction in the matter. N.D.C.C. § 50-25.1-05.2. Furthermore, N.D.C.C. § 50-25.1-06 authorizes the state, acting through the Children and Family Services Division of the Department of Human Services, to seek 'protective services' for abused or neglected children.

The child protective service process described in N.D.C.C. Ch. 50-25.1 is available for any case of suspected abuse or neglect of a child. A failure to provide medical care to any child, including a disabled infant, is included in the definition of child neglect. N.D.C.C. § 50-25.1-02(6) defines a neglected child as 'a deprived

child as defined in chapter 27-20.' N.D.C.C. § 27-20-02(5)(a) defines a deprived child as one who

Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian; [Emphasis supplied.]

Situations in which medically indicated treatment is proposed to be withheld from disabled infants with life-threatening conditions fall within this definition of neglect. The child protective service process described in N.D.C.C. Ch. 50-25.1, including reports to juvenile court and the provision of protective services, is applicable to these situations.

Therefore, it is my opinion that N.D.C.C. Ch. 50-25.1 gives the state the authority to pursue legal remedies, including the initiation of court proceedings, necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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Assistant Attorney General