

Synopsis of the Case of “Bill Tollufson”

The Minnesota court dismantled his home, consigned his property, income and bank account to a company acting as a “guardian,” forced him into locked confinement in a state hospital where he experienced psychological abuse, assaulted him with a drug that caused him severe adverse side effects, deprived him of the kind of therapy that had been effective in maintaining his physical functioning, and squandered an estimated quarter of a million dollars in Medicare/Medicaid funds on ineffective custodial care that wasn't even needed. As a result of his confinement, his condition deteriorated and he has, so far, not been able to return to totally independent living. There was nary so much as a “Sorry about that” when the commitment was rescinded after a new psychiatrist declared that he did *not* have an Axis I disorder and therefore did not meet the requirements for compulsory incarceration.

Bill Tollufson (a pseudonym) is a 73 year old former fishing guide who became physically disabled from his occupation after hip and knee surgeries and has been dependent on a wheelchair for several years. A jovial and entertaining extravert, Mr. Tollufson had relied on Social Security income and lived in HUD subsidized housing for ten years until December of 2010. Shortly before Christmas, he slid down on the seat of his wheelchair and was unable to reposition himself due to pain in his leg. Because he weighed 350 pounds, police were called to assist. Against his wishes, the officers forcibly subdued him with sedatives and took him to the local hospital. Bill had earlier discontinued a medication because he believed it was adversely affecting him and reasoned that God would not want that for him. The examining physician, angered by Bill's rationale, decided to “trump” his patient's religious views by placing him on a 72 hour hold. Mr. Tollufson was spirited away to another hospital 50 miles away from his home where commitment procedures were initiated. Thus began one of the most shameful and disgusting episodes in the history of Minnesota mental health jurisprudence.

There were many violations of state law in the handling of Mr. Tollufson's case including denial of his right to have a second opinion by a doctor of his own choice, denial of his right to appeal, and failure to abide by the rules of evidence specified by state law in the charges made against him. His rights under the *Minnesota Patient Bill of Rights* and under the *Minnesota Bill of Rights for Wards and Protected Persons* were violated. His legal representation was incompetent and violated ethical standards specified by the Minnesota Bar Association. There was gross incompetence by the psychologist who evaluated him: she made several major errors of fact, numerous unfounded inferences and she lacked adequate data to support the assertions and conclusions in the report. The psychologist did not do any psychological testing of any sort and no MRI, EEG or physical tests were conducted, yet she diagnosed him with “Cognitive Disorder, NOS” and an unspecified organic brain disorder. She did not moderate her conclusions because of the lack of empirical evidence. In doing so, she violated tenants of the Code of Ethics of the American Psychological Association and ignored professional guidelines for psychological assessment of elderly persons.

The first psychiatrist who supervised the “treatment” of Mr. Tollufson claimed that Bill was paranoid schizophrenic, not, as he testified in court, on the basis of any behavior demonstrated by Bill on the ward but on the basis of the defective initial court records. A short while later the doctor changed his diagnosis to “Psychotic Disorder, Not Otherwise Specified,” a garbage can category for psychoses that don't fit into typical symptom patterns. He obtained a court order to prescribe the drug Abilify despite affidavits from expert witnesses, citing 50 years of research, that such drugs are ineffective and often times harmful, especially for patients with Bill's kind of medical problems. Recent evidence indicates that this drug exacerbates symptoms in psychotic individuals and increases depression and aggressiveness. In his court testimony, the doctor referred to Mr. Tollufson as “Mr. Johnson” on five

different occasions, raising questions about just which patient he had in mind during his testimony, and Bill's attorney “shushed” Bill from making any objections to this colossal attributional error.

The drug was forcibly injected into Mr. Tollufson while numerous staff members held him down in a hallway of the state hospital. Bill subsequently developed several adverse reactions to the drug and one of his supporters sent a letter of complaint to the Joint Commission on Accreditation of Hospitals which included several other aspects of neglect of Bill's physical problems and psychologically degrading treatment. The hospital finally discontinued administering the drug. However they simultaneously denied him medication that he needed for a physical condition and kept him from continuing the aquatic therapy which had kept him mobile for the last 15 years. Through use of an improper method of transfer, they injured his shoulders and he continues to experience pain from the injury months later.

Appeals to several state agencies that are supposed to help in such situations were met with indifference and lack of action. Even a signed petition to the governor, Mark Dayton, failed to elicit any response whatsoever.

After five months imprisoned in a locked ward, Bill was discharged to a nursing facility in St. Paul. He complained of leg pain but his requests to see a physician were ignored and he became more vocal. Instead of calling a physician, they called a contract psychiatrist who apparently decided Bill was going crazy (because he was complaining loudly about lack of attention to his leg pain) and she wanted to drug him again. He protested even more and the police were summoned to take him to St. Joseph's Hospital in St. Paul. There they treated his leg with antibiotics and elevation and it improved. But they continued to believe the untruths in his record, forced him to take Abilify until he again developed adverse side effects, and sent him back to the state hospital after he was refused readmission to the nursing home.

Fortunately, this time he was admitted to a different ward and assigned to a new psychiatrist. The doctor read a document that had been written about Bill, by a friend of 60 years duration who also happened to be a retired clinical psychologist, that had been submitted to the state attorney general. The new psychiatrist evaluated the patient himself. He and his treatment team decided Bill did not have an active Axis I diagnosis and the commitment was therefore not justified. When confronted with this new information, the court immediately rescinded the commitment. But they did not terminate a guardianship that was based entirely on his presumed psychiatric condition.

The immediate problem then became one of placement. Bill was convinced that what he needed was to go to the Courage Center in Golden Valley where he had been after his surgeries. They specialize in aquatic therapy and Bill credited them with having saved his life when he was a patient there before. However, they did not admit him for inpatient treatment this time and their policy is to not divulge reasons for denial, although a newspaper article about them suggested it was for financial reasons – they claimed to lose money on Medicaid patients. An evaluation for admission to an assisted living facility in his home town indicated that his physical problems were too great for that facility to handle in order to be an appropriate placement, but a county social worker told him it was really because of his weight.

After several placement efforts failed, Bill finally gave up the fight, becoming depressed, morose and pessimistic about ever returning to his previous level of functioning, or to his home town. Then the psychiatrist who had been his champion left the hospital. Shortly thereafter, Bill was discharged to another nursing home in St. Louis Park, MN, one with the lowest possible Medicare rating: *Much Below Average*. His roommate was given to “urinating all over” and acting threatening. Bill was forced

to either sit in his wheelchair or lie in his bed because no other appropriate alternative seating arrangements were available and there was no room for the electric lift chair he had in storage. The bed was supposed to elevate his legs but never worked properly and it was placed directly over a heat register which resulted in Bill sweating so much his clothes became sopping wet at night. When he had another flare up of leg pain, Bill had to threaten to call the sheriff's office before the nursing home staff would give him the telephone number of Hennepin County Medical Center so he could arrange his own admission. He was this time diagnosed with infectious myositis, treated with IV antibiotics and returned to the nursing home. It was a hostile environment in which to live. He was never given proper treatment for his physical problems, he was prevented from leaving the facility, and no arrangements were made for placement in a less restrictive environment.

Finally, on his 72nd birthday, unable to stand living in that facility for another day, Bill left the nursing home against medical advice and returned to his home town where he exercised in a motel pool, producing beneficial results for his legs and feet. However, a county social worker soon descended upon him with the police, who dragged him out of the pool, across the cement sidewalk and dropped him on a gurney in his wet bathing suit. Mr. Tollufson was taken to District 1 Hospital and then transferred to a nursing home in Faribault, MN. He briefly saw his old doctor, who sent him to Mayo Clinic for physical and psychiatric evaluations but for some reason the doctor's orders were aborted and he was returned to the nursing home in Faribault. Subsequently, he developed a GI bleed and was again rushed to Mayo Clinic and treated for stomach and esophageal ulcers. He is currently back at the Faribault nursing home where his physical condition has been allowed to deteriorate from wheel-chair bound to bed-ridden status. Two sets of complaints against that facility, which is rated *Below Average* by Medicare, were registered with the Office of Health Facility Complaints (a part of the Minnesota Department of Health) and their response - to send for medical records - constituted a totally inadequate "investigation." One of the complaints was that the nursing home staff had not allowed him to have a shower in over two months, something the Minnesota Department of Health seemed to think was alright even though it violates federal nursing home standards. The Ombudsman for Older Minnesotans was then contacted but was unable to get Mr. Tollufson a shower or the needed aquatic physical therapy. She promised to get a copy of his medical records so that they could go over them together and identify errors, but she never did so and abandoned him as a client without notifying him. The nursing home has continued to provide inadequate medical care (including having him sleep in a bed that was six inches shorter than he is tall for a full year before being forced to lengthen it by a nursing home inspector), obstructed efforts Mr. Tollufson made to attend medical appointments he made himself (even though he is legally considered capable of doing so), and provided a steady stream of harassment and psychological abuse. His guardian has failed to abide by half of the legal standards specified in *Conservatorship and Guardianship in Minnesota* published by the Minnesota Conference of Chief Judges. The county court has continued to use the flawed psychological evaluation as a justification for restricting Mr. Tollufson's liberty.

I have now been trying for 30 months to get Mr. Tollufson's civil rights respected and his nursing home care to meet the basic state and federal standards. Minnesota has some nice-sounding legislation on the books – the *Health Care Bill of Rights* and the *Bill of Rights for Wards and Protected Persons*, but they are totally ineffective because there is no one in state government who will take the responsibility of enforcing their provisions. Even the state laws regarding civil commitment are ignored by the court. I have contacted many Minnesota state agencies in this process and have received no help from any of them. I contacted the State Representative in Minnesota for Mr. Tollufson's district, Kelby Woodard, and he was unable to find out who was supposed to enforce these legal rights. Senator Al Franken's office was sympathetic but unable to intervene in any effective manner. Some of this negligence may be indirectly due to shrunken budgets, but there is nothing in the legislation that would allow the state

to take such liberties with the law or with people's lives because of money. Apparently, federal intervention is the only alternative when states shirk their responsibilities toward their citizens. It is for this reason that a complaint was filed under the provisions of the Americans with Disabilities Act and other relevant laws. The only response received from the Department of Justice after a year is that the case is “in evaluation.”