

## **Opinion No. 57-296**

November 20, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** H. Bashein, M. D., Superintendent, Los Lunas Hospital & Training School, Los  
Lunas, New Mexico

### **QUESTION**

#### QUESTION

May the Board or the Director of the Los Lunas Hospital and Training School forcibly discharge a patient or inmate from that institution because his parents, guardians or the person in charge of the inmate has left the State of New Mexico and has taken up residence in another State?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

It is our understanding that the Los Lunas Hospital and Training School has several inmates in the school who were admitted at a time when their parents resided in this state. Subsequent to the date of admission the parents, or guardians have left the State of New Mexico and now reside in some other State. The Director of the Institution has attempted to place the inmates in another institution in the state where the parents of the inmates now reside, but the authorities in that State refused to accept the patients. The parents of the patients apparently refuse or are unable to accept custody. In view of the above the question arises whether the Director of the School or its Board may authorize the forceable discharge of the patients into the custody of their parents or guardian or whether there is any means of forcing the other State to accept custody of the inmates.

Inasmuch as this state has no reciprocal treaty or compact pertaining to the exchange of patients residing in institutions such as the Los Lunas Hospital and Training School, we know of no way in which another state may be forced to accept custody of the inmates.

Our Act which established the Los Lunas Hospital and Training School at Section 34-3-7, N.M.S.A., 1953 Compilation, in essence states that inmates shall not be discharged

until the superintendent or a physician of the institution has satisfied himself that the mentally defective person no longer requires institutional care or treatment or unless good cause is shown that the inmate shall be cared for by others and thus not require institutional care or treatment. In the instant case it is apparent that if the inmate is discharged, proper care will not be forthcoming and hence discharge under these circumstances is unauthorized. It further appears that treatment at the hospital is not necessarily conditioned upon the continued residence of the parent or guardian in this State.

Since our Act does not contain authority for entering into a reciprocal treaty contract the solution may well be in the adoption of a reciprocal treaty with other states for the exchange of inmates where the parents have adopted residence in another state. Such action must and probably should be undertaken by the New Mexico Legislature.