

Opinion No. 59-153

September 30, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Stanley J. Leland, M.D. Director Department of Public Health Santa Fe, New Mexico

{*237} This is in response to your recent request for an opinion on the following questions relating to the confinement of the mentally ill:

1. Does the term 'admitting physician' mean; (a) the doctor under whose care the patient is admitted in the hospital, (b) owner of a proprietary hospital, (c) may it include an intern or resident, (d) a doctor in the emergency admissions ward?
2. Is 'admitting physician' synonymous with; (a) licensed physician, (b) physician on the staff of the hospital, (c) hospital staff physician, (d) examining physician?
3. What is the liability of the hospital admitting these patients in the case of suicide, homicide, escape, injury, etc?
4. Who is responsible for costs of hospital and physicians' services including consultant services and transportation costs?
5. Should special forms be provided for the "sworn application" and the "certification" provided for in § 34-2-18, subsection A(1) and A(2)?

For the answers to the above questions, see analysis under the corresponding numbers.

1. Section 34-2-18 reads in part as follows:

{*238} "A. The superintendent or admitting physician of a hospital may admit an individual upon; . . ."

A study of this section in its entirety reveals an intention on the part of the legislature to make the matter of admission a purely administrative function and at the same time to provide that the admission shall be by a responsible person associated with the admitting hospital.

A superintendent may admit a patient if the proper sworn application and certificate are furnished at the time admission is sought. No examination is required for the admission, since the patient has already been examined by a licensed physician within three days prior to admission and another examination is required by a staff physician within twenty-four hours after the patient is admitted.

We hold that the language insofar as it pertains to admission contemplates a requirement that the admitting official be a responsible member of the administrative staff of the hospital and that this may include the superintendent, acting superintendent or any physician who is a member of the administrative staff authorized to admit. The title of superintendent may also include a supervisor, administrator, or director, depending upon the particular designation of the administrative head in the particular hospital.

The absence of the qualification that the admitting physician be a licensed physician and the authorization for persons other than physicians to admit, is an indication that an intern or resident would be permitted to admit such a patient. Interns and residents are physicians. For the statutory definition of these terms see Section 67-5-10, N.M.S.A., 1953 Compilation, P.S.

The term 'admitting physician' includes, or may include all categories under question number one except category (a), and if the doctor in that category is an administrator or staff physician of the admitting hospital, he would, by coincidence, also be included.

2. Because of the above holding, it is our opinion that an admitting physician is not required to be a 'licensed physician'. We define a licensed physician as one who holds himself out to the general public in this state as a medical doctor and who is licensed by the state to practice medicine herein.

The admitting physician might be a staff physician and we are constrained to hold that the terms 'staff physician' and 'physician on the staff of the hospital' are synonymous. If an 'intern', 'resident' or 'assistant resident' is not considered generally to be a 'staff physician', and we are informed that as a general rule they are not so considered, then an 'admitting physician' would not have to be a staff physician, but could be an intern or resident.

We feel that the terms 'licensed physician', 'staff physician', 'physician on the staff of the hospital' and 'examining physician' all contemplate a medical doctor licensed to practice medicine in this state. Naturally, any physician in these categories, if employed in or by the hospital, could serve as 'admitting physicians'.

3. This question, without a specific set of facts, admits of no specific answer. Therefore the question will be answered in a general fashion.

The rule is that the state is bound to furnish inmates of its hospitals for mental defectives with every reasonable precaution to protect them from injury, either self-inflicted or otherwise.

The degree of care owing to mental defectives is generally regarded as being more exacting, since the state is the guardian of their well being and safety. The state is not an insurer, however, and is held only to that degree of care which is commensurate with the patient's known condition.

The question of liability for negligence depends upon what is sometimes referred to as the 'reasonable man' test. In the field of medicine the test for negligence would be dependent on whether the actions of the defendant were those of a reasonable person possessing the same degree of learning, experience and training as the defendant, taking into consideration the known facts, or what facts should have been known, concerning the patient.

Questions involving negligence in the supervision, confinement and care of mental defectives are to be answered in each particular case. The defense to an action for negligence is that the defendant acted reasonably.

4. In the case of a child who is committed to an institution of the state, a payment of Ten Dollars (\$ 10.00) per month may be collected from the county of residence of the person so committed.

Under § 34-3-8, N.M.S.A., 1953 Compilation, which pertains to the Los Lunas Hospital, provision is made whereby the costs of court, transportation and other necessary expenses in connection with committing patients to that institution may be taxed against the county of residence of the patient. It is within the discretion of the court to determine whether the costs will be borne by the parents, guardians, custodians or the county of residence. There is no authority to extend this responsibility for payment by the county to any other section of the statutes.

If the indigent, committed under § 34-2-18, is on the welfare rolls at the time of his commitment, it is probable that a part of this cost should be paid by that department. It is urged that your department meet with the Welfare Department to develop and pursue a definite policy in regard to mentally ill and indigent patients who are receiving public aid and assistance.

Under the authority of the Bachechi case, **In re Bachechi's Estate**, 59 N.M. 159, the estate of a person committed as a mental incompetent may be utilized to pay reasonable costs for his care and maintenance. This is subject, of course, to the demands made upon the estate by the dependents of the person committed, with payment for the care and maintenance being secondary to the support of the dependents.

5. Whether or not you should supply special forms for the sworn application and medical certification is a matter within the discretion of your department. Suggested forms are enclosed with this opinion.

MEDICAL CERTIFICATION

I, ___ BEING A DULY LICENSED PHYSICIAN IN THE STATE OF NEW MEXICO, CERTIFY THAT ON THIS ___ DAY OF ___, 19___, I HAVE PERSONALLY EXAMINED ___ AND FIND HIM/HER TO BE MENTALLY ILL. IT IS MY BELIEF THAT BECAUSE

OF THIS ILLNESS, THE PATIENT IS LIKELY TO INJURE HIMSELF OR OTHERS IF NOT TAKEN INTO APPROPRIATE CUSTODY.

PHYSICIAN_____

APPLICATION FOR THE HOSPITALIZATION OF A MENTALLY ILL PERSON

_____, being first duly sworn upon oath deposes {**240*} and states: That _____ (he, she) is related to _____ (patient's name), or is a health officer, law enforcement officer, or officer of a charitable institution in the State of New Mexico, and that it is the belief of the affiant that the said _____ (patient's name) appears to be mentally ill and that because of this illness is likely to cause injury to himself or to others if not immediately taken into appropriate custody.

The affiant further deposes and states that the grounds for such belief are as follows: (describe actions, delusions, etc. of patient) _____

Applicant

Official status or relation

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

My Commission Expires:

B. J. Baggett

Assistant Attorney General