

Opinion No. 65-104

June 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Dan Palmer, M.D., Superintendent, New Mexico State Hospital, Post Office Box
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QUESTION

FACTS

The New Mexico State Hospital desires to enter into a temporary working agreement with a fully trained and experienced psychiatrist who does not have a medical license to practice medicine in the United States. During the time the psychiatrist is preparing for his New Mexico medical license examination the Hospital would like to use him in an administrative organizational capacity only. The contract with the Doctor expressly prohibits him from "treating any patients which include interviews, physical examinations or prescribed treatment or medication." The terms of the agreement specifically provide that his function will be solely administrative, "providing assistance to regional unit teams in the area of the relationships between staff members of the various professional disciplines, discussion with them of the process of their functioning together, and the subsequent reporting of progress they make and further recommendations by the psychiatrist."

QUESTION

Does this agreement constitute a practice of medicine in violation of New Mexico law.

CONCLUSION

No.

OPINION

{*176} ANALYSIS

Any person who attempts to practice medicine in New Mexico with out having a license therefor may be criminally prosecuted under Section 67-5-12, N.M.S.A., 1953 Compilation. Upon conviction the person shall be guilty of a felony which is punishable by a fine not to exceed one-thousand (\$ 1,000) dollars or imprisonment in the county jail not to exceed one (1) year or by both such fine and imprisonment in the discretion of the court. The "practice of medicine" is defined in Section 67-5-10, N.M.S.A., 1953 Compilation which is set forth in applicable part as follows:

"For the purpose of this act (67-5-1 to 67-5-8 to 67-5-14), the words 'practice of medicine' shall mean to open an office for such purpose or to announce to the public or any individual in any way, a desire or willingness or readiness to treat the sick or afflicted, or to investigate or to diagnose, or offer to investigate or diagnose any physical or mental ailment or disease of any person, or to suggest, recommend, prescribe {*177} or direct, for the use of any person any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture or bodily injury or deformity, after having received, or, with the intent or receiving therefor, either directly or indirectly, any bonus, gift or compensation . . ."

This office is of the opinion that the administrative duties to be performed by the psychiatrist under his contract with the hospital as set forth above do not constitute an unlawful practice of medicine in violation of Section 67-5-10, supra. Over the years the question of what constitutes practicing medicine within the meaning of licensing statutes has occasionally been before the courts of the various states. In deciding the question the courts have said that the practice of medicine "in its broadest sense means the practice of the art of healing disease and preserving health." 41 Am. Jur. **Physicians and Surgeons**, 151, 86 A.L.R., 623 Annotation: **Construction as regards kind or character of treatment of restrictive medical or surgical license.**

Clearly under the statutes and authorities cited above the agreement in question which expressly prohibits all medical functions and contemplates only administrative duties is valid in all respects.