

Opinion No. 65-81

May 28, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Clay Buchanan, Director, Legislative Council Service, Room 201, State Capitol, Santa Fe, New Mexico

QUESTION

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1. Can a public hospital board or its staff committee deny staff privileges to a physician duly licensed to practice in this state?
2. Can a public hospital board or its staff committee deny a duly licensed physician the right to admit and treat patients in the public hospital because of political beliefs, medical philosophy or other reasons?
3. As applied to the granting by a hospital in this state of staff privileges to a licensed physician, is there any distinction between a "temporary" license granted upon application of a physician, and a license granted, renewed or continued after review, and other licensing procedure by the granting authority?

CONCLUSIONS

1. A hospital board can deny such staff privileges.
2. Such right can be denied only if the physician violates the law or reasonable hospital rules.
3. The hospital rules could make such a distinction.

OPINION

{*142} ANALYSIS

Your first question is answered by the opinion in the case of **Monroe v. Wall**, 66 N.M. 15, 340 P.2d 1069. While that case dealt with the right of a public hospital board to deny staff privileges to persons who practice a certain system of medicine, the Court did say that Section 67-8-12, N.M.S.A., 1953 Compilation "reserves to the governing boards of public hospitals full control over the making of regulations to determine who should be on the staff. . . ." Thus the answer to your first question is that the matter of staff privileges is within the control and discretion of the governing board. However, the staff

committee is given no such control under Section 67-8-12, supra. This section provides in pertinent part that the governing authorities of all state, county and municipal hospitals, as well as any publicly supported hospital, have "complete control and management of such hospitals with power to make rules and regulations for the operation of such hospitals and to determine who will be on the staff of such hospitals."

The issue raised in your second question has been litigated many times in other jurisdictions. The almost universal rule is that a duly licensed physician has no absolute or constitutional right to practice in a public hospital. Practice in such a hospital has been said to be a privilege rather than a right. **Bryant v. City of Lakeland**, Fla., 28 So. 2d 106 (1947); **Findlay v. Board of Supervisors of County of Mohave**, Ariz., 230 P.2d 526; **Hayman v. Galveston**, 273 U.S., 414. It is likewise the general rule that governing authorities of public hospitals may regulate and control their hospitals and prescribe reasonable rules and regulations to be followed by physicians using the facilities. **Jacobs v. Martin**, N.J., 90 A.2d 151; **Henderson v. Knoxville**, Tenn., 9 S.W. 2d 698.

However, the rules adopted must {**143*} be reasonable and, having been adopted, the governing board cannot arbitrarily preclude the practice of the duly licensed physician in the hospital. Of course, the physician must act in conformity with the law and the reasonable rules adopted. His failure to do so would be a sufficient reason to bar him from practice in the hospital.

This doctrine is stated thusly in Regan, **Doctor and Patient and the Law**, p. 123 (1949).

"A regularly licensed physician and surgeon has a right to practice in the public hospitals of the state so long as he stays within the law, and conforms to all reasonable rules and regulations of the institutions. Neither a city nor the authorities of a public hospital can prescribe, for the conduct of physicians and surgeons practicing in such hospitals, rules or regulations that contravene or conflict with state laws. But the governing body of a public as well as of a private, hospital may prescribe reasonable rules and regulations, within statutory limitation, for its management. Such rules may require certain qualifications of physicians permitted to practice in the institution and may exclude those who follow certain systems of medicine."

What is a reasonable rule or regulation is, of course, a matter that must be determined in each individual instance. The managements of all modern hospitals require physicians and surgeons to keep thorough clinical reports concerning their patients and the treatment administered. Separate wards are required for certain cases. Additional rules provide for numerous hygienic precautions.

You mention specifically a rule denying physicians the right to admit and treat patients in a public hospital because of political beliefs or medical philosophy. We would think that such a rule regarding political beliefs would not be reasonable -- with the possible exception of a situation where a physician was "preaching" to his patients a doctrine of

violent overthrow of the government. As to medical philosophy, it would depend on the language of the rule. Such rules can provide for the exclusion of those who follow certain **systems** of medicine. *Monroe v. Wall*, supra. However, a rule which excluded physicians who believed, for example, in physical therapy would not be reasonable. Any rule regarding "medical philosophy" would have to be very explicit. Physicians, like other professional persons, have varying views on the philosophy of their profession. A rule which required rigid adherence to some particular view might well be unreasonable.

In answer to your third question, since the hospital board has complete control over the matter of staff privileges, it could make a distinction between a temporary and permanent license to practice medicine.