

## Opinion No. 23-3716

July 13, 1923

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Hon. F. H. Crail, Superintendent Insane Asylum, East Las Vegas, New Mexico.

**Insane Persons May Not be Discharged from the Insane Asylum Except by Court Order.**

### OPINION

{\*68} We have your request as follows:

"It has long been the practice at the New Mexico Insane Asylum to parole patients for a period of ninety days when it has seemed desirable to have them try to live again in their former environment. When a report on the condition of such paroled patient was not received at the end of ninety days, it was customary to consider that patient automatically discharged from the institution. In like manner, if a patient escaped and was not returned within ninety days, he was considered to be automatically discharged and his name stricken from the roll.

"As I understand it, the law regarding the discharge of patients requires that the committing judge must give his consent before such discharge is effective. I would like your opinion on the legality of the practice that has been so long in vogue, and what your advice would be regarding procedure in cases where no report is made on paroled patients, and where nothing is heard from a patient who has escaped."

A person is not discharged from the insane asylum except by court order. It seems to be necessary to comply with the provisions of Sec. 6 Chap. 192 S. L. 1921. The provisions of Sec. 5094, Code 1915, however, give your Board of Directors quite broad powers. Under the law, as it now stands, you might be justified in making a rule that, after the expiration of a ninety-day parole without complaint or information to the contrary, the patient may be deemed to be cured and, thereupon, make the certificate of sanity indicated by said section 6 and procure the necessary order of court. This rule, however, we think, would not apply to "escaped patients." In the latter case your board would probably not be justified in making the certificate of sanity. An "escaped patient" should be received, under ordinary circumstances, without further orders of the court.

As to your inquiry relative to the Des Moines, Iowa, patient, we think she is still a charge of the state of New Mexico; and further, as to the case of Rafael Vaca we think he may be returned to the asylum without further court order.