

Opinion No. 44-4443

January 25, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Dr. J. J. Johnson, Sr., Superintendent, New Mexico State Hospital, Las Vegas,
New Mexico

In your letter dated January 24, 1944, you state that the family of a patient submitted a request to the State Hospital of New Mexico, together with his physician, to have him discharged in order that he may receive special treatment from his physician. You are wondering whether you have power to discharge him under such circumstances, and also as to the liability in connection with such discharge.

Section 37-220, Sub-section 2 of the 1941 Compilation authorizes the discharge of a patient, when, in your judgment, the same will not be detrimental to the public welfare or injurious to the patient. However, under this section, if you deem it advisable, you may refuse to certify to the discharge of an unrecovered patient, and thereby present the matter to the District Court. In my opinion, if you are not certain that the patient should be discharged upon request, the matter should be left in the discretion of the District Court, which has authority to order the discharge under the circumstances above outlined. In that way there could be no question of any liability against you or the board growing out of such discharge.

By C. C. McCULLOH,

First Asst. Atty. General