

Opinion No. 44-4459

February 16, 1944

BY: EDWARD P. CHASE, Attorney General

TO: James R. Scott, M. D., Director, State Department of Public Health, Santa Fe, New Mexico

I have your letter of February 8, 1944, wherein you enclosed a letter of the same date from Stuart W. Adler, M. D., Director, Division of Maternal and Child Health. You ask us to give an opinion concerning the matter set forth in detail in Dr. Adler's letter.

Dr. Adler calls our attention to the fact that in the official plan of the State Board of Health there is a program known as the Emergency Maternity and Infant Care Program, under which certain types of medical care and hospitalization are made available to the wives and infants of service men in the lower four pay grades.

Dr. Adler, in connection with this matter, has handed me a photostatic copy of an application for maternity care prepared by a M. D. and the application for maternity care signed by a person entitled to such care. The request for authorization for medical or hospital service for maternity cases filled out and signed by the M. D. states:

"I agree not to accept payment from the patient or her family for services authorized."

It further appears that the physician who signed this application performed the services enumerated in the form that he filled out to your department but, however, charged the patient a \$ 250.00 fee, but did not submit a bill to your department for services rendered under the program. However, the application signed by the doctor requested hospital care, which was furnished and paid for by your department. Your department's state plan provides:

"Any services rendered shall be provided without cost to the family and will be offered only when similar services are not otherwise available from other sources."

"Authorization for medical or hospital care will be made by the State health agency under agreement with the attending physician or the hospital that no payments will be accepted from the patient or family for the services authorized after the date on which application was signed by the patient and until the case is discharged by the physician."

Section 71-117 of the New Mexico 1941 Compilation provides:

"Any person, firm, or corporation violating any order, rule or regulation of the state board of public health adopted pursuant to the provisions of this act shall be punished by a fine of not to exceed one hundred dollars (\$ 100.00), or imprisonment in the county jail for not to exceed ninety (90) days, or both such fine and imprisonment, in the discretion

of the court. The state board of public health may also enforce any of its lawful rules and orders by any appropriate civil action."

In view of the foregoing it clearly appears that the M. D. has violated a regulation of your department, in addition to violating a provision that he expressly consented to by signing the request sent to your department.

I will further suggest that this matter should be referred to the Board of Medical Examiners since, in my opinion, the above mentioned transaction would appear to be unprofessional conduct which should be called to the attention of the Board of Medical Examiners, in view of the provisions of Section 51-507, New Mexico 1941 Compilation.

Hoping that the above fully answers your questions, I remain,

By HARRY L. BIGBEE,

Asst. Atty. General