

Opinion No. 44-4615

November 20, 1944

BY: C. C. McCULLOH, Attorney General

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

We are in receipt of your letter of November 17, 1944, in which you state that a patient who had been briefly treated was paroled in 1941, that the patient has never been discharged, that the patient has remarried and that, in your opinion, the patient was not insane at the time of the marriage. In view of this situation, you ask whether or not you could date the certificate of discharge back prior to the date of the marriage.

A certificate of discharge is merely evidence that a person who has been insane has recovered his sanity. Thus, the certificate of discharge, in itself, would not make the marriage of an insane person valid, but would merely be evidence that such marriage was valid; nor would the fact that a certificate of discharge had been issued make a marriage valid as to a person who was, in fact, insane.

In view of this situation, however, I would suggest that you issue the certificate as of the present, but state in the body of the certificate that such person was sane, or had recovered her sanity, prior to the date of the marriage, even though you have to write in that date on the form of certificate you use.

By ROBERT W. WARD,

Asst. Atty. General