

## Opinion No. 45-4717

May 17, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. R. F. Apodaca Superintendent of Insurance State Corporation Commission  
Santa Fe, New Mexico

{\*69} In your letter of May 14, 1945, you state the following facts:

"In some instances fraternal societies operating in the State of New Mexico require that every person, before being admitted {\*70} as a member, must have a medical examination by a local qualified physician, whereas in some other instances a qualified physician acting in the capacity of medical director for the fraternal society approves or rejects the application for membership in such society."

You inquire whether a medical examination is required in all cases or whether the practice of some societies of merely having a questionnaire filled out and approved by a physician elsewhere is sufficient.

Section 60-908 of the 1941 Compilation provides that the certificate issued by any such society shall contain several items which together shall constitute the agreement between the society and the member. Among the items listed is the application for membership and the medical examination.

Section 60-907 authorizes any society to admit to beneficial membership persons between the ages of 16 and 60 years who have been examined by **a legally qualified physician** and whose examination has been supervised and approved in accordance with the laws of the Society.

Section 60-912 of the 1941 Compilation, in connection with the requirements for organization of a fraternal benefit society provides on page 78 as follows:

"But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide application for death benefit certificates have been secured upon at least 500 lives for at least \$ 1,000.00 each, and **all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians**, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society;"

It is apparent that before an organization can be perfected, the examination of applicants by legally qualified practicing physicians in New Mexico is required and subsequently the application of any new member must be accompanied by a like medical examination. A medical examiner in another state is authorized to approve an

examination made by a local physician but merely approving a questionnaire filled out by a person who is not a practicing physician would not be sufficient to comply with the requirements of the law.