

Opinion No. 64-44

March 31, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Walter D. Atkins, D.D.S. Director, New Mexico Department of Public Health, 408
Galisteo Street, Santa Fe, New Mexico

QUESTION

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1. Does the State Board of Public Health have authority to promulgate regulations which would require all members of the healing arts professions to have their x-ray equipment surveyed by the Department of Public Health or by an approved professional? This would not be intended to limit in any way the kind or amount of radiation used on the patient.
2. Does the Department of Public Health have authority to require persons selling or servicing x-ray equipment to report such sales and/or service to this Department on forms provided at specified intervals for the purposes of assuring complete registration of such equipment?

CONCLUSION

1. Yes.
2. Yes.

OPINION

ANALYSIS

The answers to both of your questions are governed by the provisions of the Radiation Control Act contained in Sections 12-9-1 through 12-9-8, New Mexico Statutes Annotated, 1953 Compilation (Supp. 1963). Under Section 12-9-4, the Board of Public Health has the authority "to promulgate rules and regulations concerning the health aspects of radioactive materials and radiation equipment." Under Section 12-9-1 (A) and (B) of the act, radiation equipment "means any device which is capable of producing ionizing radiation" which "includes X-rays." Therefore, X-ray equipment can be controlled by appropriate regulations unless such equipment is declared not to be a health hazard by the Board pursuant to the standards provided in Section 12-9-5 (D) of the Act. Of course, as pointed out above, this regulatory authority of the board is restricted to the health aspects of radioactive materials and radiation equipment and

another pertinent limitation upon this authority (as you have already noted in your first question) appears in Section 12-9-4. This statute prohibits the Department of Public Health from limiting "the kind and amount of radiation that may be applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts."

Subject to the above stated limitations the Board is authorized to adopt regulations providing for the survey of X-ray equipment used by members of the healing arts professions and also can require that the Department of Public Health be notified of sales and service of X-ray equipment in order to insure complete registration of such equipment. Any question as to the authority for this latter requirement is undoubtedly resolved when Section 12-9-5 of the Radiation Control Act is considered. This section of the law expressly provides for the written registration of radiation equipment or materials except that which is "of such low intensity or quantity that it is determined by the department not to be a health hazard" and a further exception referring to "radioisotopes which are permanently installed in a patient undergoing diagnostic or therapeutic treatment by or under the direction of a licensed practitioner."