

Opinion No. 43-4216

January 25, 1943

BY: EDWARD P. CHASE, Attorney General

TO: New Mexico State Hospital, Las Vegas, New Mexico. Attention: J. J. Johnson, Sr., M. D.

We are in receipt of your letter of January 21, 1943, in which you ask whether or not the Board of Directors of the New Mexico Insane Asylum may, by resolution, provide that any patient who has been out of the hospital for a period of six months, whether on parole or by escape, may be automatically discharged.

The matter of the discharge of patients from the New Mexico Insane Asylum is covered by Section 37-220 of the 1941 Compilation. This section vests the authority to discharge patients in the District Judge who originally had jurisdiction of the patient, and the medical superintendent of the hospital exclusively. It sets up the conditions under which a discharge may be made, and the procedure that must be followed in making a discharge. Nowhere in this section is authority given to automatically discharge a patient after he has been out of the hospital for a period of time, further, the superintendent or District Judge must file a certificate of discharge in the county from which the patient was originally committed.

By Section 37-221, the various sheriffs are given the duty to arrest any patient who escapes from the hospital and deliver him to such person as the medical superintendent of the hospital may designate.

In addition, a person committed to the hospital who has been charged with crime must be delivered to the sheriff of the proper county, the warden of the penitentiary, or such person as the Judge having jurisdiction over the crime may designate.

In view of the foregoing, it is my opinion that the Board of Directors of the New Mexico Insane Asylum does not have authority to discharge patients in the manner provided by their resolution, and that the only way a patient may be discharged is in the manner set forth in Section 37-220.

Hoping that this sufficiently answers your inquiry, I am,

By ROBERT W. WARD,

Asst. Atty. General