

**Montana State Tuberculosis Sanitarium, Admission to Tuberculosis Patients, How Admitted. Examining Physicians, Necessity of Examination by Designated.**

The method of examination mentioned in Sec. 9, Chap. 125, Laws of 1911, are not conclusive as to the sanitarium, nor intended in all cases to be exclusive as to the county. While it is desirable that the certificate of a designated physician be obtained, a failure to procure such certificate will not deprive the sanitarium of authority to receive, examine and treat patients sent by local authorities.

October 17th, 1913.

Hon. T. D. Tuttle,  
President State Tuberculosis Sanitarium,  
Warm Springs, Montana.

Dear Sir:

I am in receipt of your letter of the 12th instant, submitting the question:

"Would it be within the intent of the law to admit as patients to this institution county cases examined by the county physician or a health officer, though such physician or health officer is not a regularly appointed examining physician?"

The state hospital to be known as the "Montana State Tuberculosis Sanitarium" was created and established by the provisions of Chap. 125, Session Laws of 1911. The question here submitted has relation to the construction and application of the provisions found in Secs. 9 and 10 of this chapter. In Sec. 9 it is provided that there shall be appointed

"Reputable physicians \* \* \* who shall examine all persons applying for admission to said sanitarium for treatment."

In Sec. 10 provision is made for the admission of free patients upon the written request of local authorities, and it is further provided that the county or town chargeable with the care of indigent persons shall bear the expense of transporting such person to and from the sanitarium, and shall also bear the expense of

"Treatment, maintenance and the actual cost of clothing furnished by the sanitarium to such poor and indigent person." Section 10 further provides:

"No person shall be admitted as a patient in said institution without the certificate of an examining physician, \* \* \* and if, upon the reception of a person at such sanitarium, it is found by the authorities thereof that he or she is not suffering from tuberculosis or miner's consumption, he or she shall be returned to the place of his or her residence and the expense of transportation to and from the sanitarium shall be paid by the county," etc.

It appears from this provision in Sec. 10 that the certificate of "an examining physician" is not conclusive on the sanitarium, nor is it a protection to the county, for notwithstanding such certificate, the county may be called upon to bear the expense of transporting the patient back to the county. Such certificate is rather a protection to the patient, and also a cautionary measure on the part of the county. If then such certificate of examination is not recognized by the sanitarium, why should it be conclusive as against the county, and if the local authorities, including the county physician, and the "examining physician" disagree, is the county and the patient without redress or appeal? Under the law the direct benefit resulting from the treatment is to the individual, and the ravages of the disease are not stayed by reason of any conflicting claims of authority. In view of the facts stated or necessarily included in the law that the county is liable for the expenses, that application must be made through the local authorities who must officially act thereon, that the certificate of the examining physician is only advisory as to the sanitarium, I am inclined to the conclusion that the clause appearing in Sec. 9 to the effect that the "examining physician" referred to therein "shall examine all persons applying for admission," etc., is not so far mandatory that it cannot be departed from when the right of the case demands it in subserving the real intent and purposes of the law. The phrase "certificate of an examining physician" may

with as much logic and propriety be taken to mean "certificate of the physician who examines," as to have reference to one of the physicians referred to in Sec. 9.

The method of examination mentioned in Sec. 9 is by the positive provisions of Sec. 10 not conclusive as to the sanitarium, and I do not believe it is intended in all cases to be exclusive as to the county. Cases might arise in localities where no physician had been designated or where the designated physician could not or for reasons which he deems sufficient, did not act. It can hardly be maintained that in such cases the patient is deprived of the rights and privileges conferred by the statute. Yet if the method referred to in Sec. 9 is exclusive that would be the case, for no provision is made for vacancies, emergencies or failure on the part of the designated physician to act. This provision of Sec. 9 may apply with direct force to "private patients" referred to in Sec. 11, for there application is made to the institution, and the local authorities are not called upon to act either officially or otherwise. The conclusion reached is that while it is very desirable that a certificate of a designated physician, if one has been designated, be obtained, yet a failure to procure such certificate will not deprive the sanitarium of authority to receive, examine and treat patients who are sent there by the local authorities.

Yours very truly,

D. M. KELLY,  
Attorney General.