

Tuberculosis Sanitarium, Admission to. Examining Physician's Certificate, Furnished Applicant. Fees, of Examining Physician.

County's necessity of obtaining examining physician's certificate.

The fee of an examining physician must be paid by the person or party employing him, whether the patient or the county.

Where the county at its expense sends a patient to the tuberculosis sanitarium, it is not necessary that such patient be examined by "an examining physician," but he may be examined by the regular county physician.

October 29th, 1913.

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

Dear Sir:

I am in receipt of your letter of the 26th instant, enclosing a letter addressed to you by Hon. Gus J. Stromme, chairman of the board of county commissioners of Silver Bow County, making inquiry as to the method of procedure in the payment of the fees of an "examining physician" for services in examining indigent patients who are sent by the county to the tuberculosis sanitarium. Sec. 9 of Chap. 125, Laws of 1911, provide for the designation of "examining physicians," and also provides that their fee shall not exceed three dollars for each patient, but the act does not provide as to whom this fee shall be charged. In the latter part of Sec. 8 of said chapter the expenses for which the county is liable are enumerated, and this enumeration does not make any reference to the "examining physician's" fee. However, this expense account only relates to expenses in transporting the patient to and from the sanitarium, and to his expenses while there. Sec. 10 provides that indigent persons desiring free treatment must apply to the local authorities, and that such local authorities make the application for his admission. One of the preliminary steps to be observed by the local authorities is an examination of the patient by a physician. In an opinion addressed to you on the 17th instant, this office held that it was not mandatory in all cases that such examination should be made by one of the "examining physicians" named in Sec. 9, but that the same might be done by the regular county physician. However, if the local authorities, either directly or indirectly, cause the patient to be examined by an "examining physician," a contractual relation is thus created between the county and the physician, and the county is liable for the payment of his fee, not exceeding three dollars. The bill of the physician in such cases should be filed with the county direct, for the county audits the claims filed against it. The state board of examiners has no jurisdiction over claims which are strictly claims against the county. In the case of private patients, under the provisions of Sec. 11 of said chapter, it is my judgment that such examination fee should be paid by the patient.

Neither the provisions contained in Sec. 9, requiring the designation of "examining physicians," nor the statement therein limiting their fee to three dollars, is sufficient to create a charge against the state. Where the examination is had of an indigent person, the county in effect receives the benefit, for the county is charged with the care and support of such person, and hence the claim should be against the county direct. Where a "private patient" is examined, he himself receives the benefit of such examination, hence the physician should collect the fee from him.

I return herewith the letter of Mr. Stromme.

Yours very truly,

D. M. KELLY,
Attorney General.