

State Board of Examiners—Tuberculosis Sanitarium—Treatments—Inmates.

The state board of examiners has no authority to delegate to the executive board of the tuberculosis sanitarium power to limit the length of treatment that the institution shall give to inmates thereof.

Dr. C. E. K. Vidal,

February 3, 1926.

Superintendent Montana State Tuberculosis
Sanitarium,
Deer Lodge, Montana.

My dear Doctor Vidal:

You have requested my opinion as to the authority of the state board of examiners to delegate to the executive board of the state tuberculosis sanitarium authority to limit the length of treatment that the institution shall give to inmates.

As to the abstract question of delegation of authority, I am satisfied that the board of examiners possesses full control over the institution and has authority to supervise, direct, and control the functioning of the executive board and of the president of the institution. Such appears to be the clear intent of sections 1513 and 1524 of the code. Possessing such authority, I have no doubt that the board of examiners may delegate to the executive board any authority with reference to the admission and keeping of inmates which the board of examiners itself possesses.

A careful examination of sections 1511 to 1525 of our code relative to the state tuberculosis sanitarium discloses that in only one sentence of the act has the legislature expressed itself upon the matter of the length of time that inmates shall be permitted to remain in the sanitarium. That is in section 1517 in which the following provision is made:

“The president shall * * * under the supervision and control of the executive board, discharge such patients as are sufficiently restored to health.”

In my opinion, the policy of the legislature in establishing a state tuberculosis sanitarium was two-fold and contemplated both the treatment of the unfortunate sufferer from tuberculosis and “miner’s consumption” and also the protection of society from the spread of these diseases.

Viewed from either standpoint, it is evident that the legislature contemplated that patients should be discharged from the tuberculosis sanitarium when "sufficiently restored to health."

What is a sufficient restoration to health must, of course, rest in the sound judgment of trained physicians who have immediate charge of the inmates of the sanitarium. To assert, however, that either the state board of examiners or anybody else in charge of the institution may adopt arbitrary regulations limiting the stay of patients in the hospital, regardless of the progress of the disease from which they are suffering, would, in my opinion, be wholly subversive of the legislative intent in establishing the institution and would constitute an unwarranted exercise of authority.

It is, therefore, my opinion that the board of examiners possesses no authority to delegate to the executive board of the tuberculosis sanitarium power to limit the length of treatment that the institution shall give to inmates thereof.

Very truly yours,

L. A. FOOT,

Attorney General.