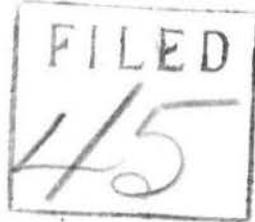


OSTEOPATH: Osteopaths have legal right to participate as a physicians in sanity inquest on county patients.

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February 20, 1936.



Honorable W. Ed. Jameson  
President, State Eleemosynary Board  
Jefferson City, Missouri

Dear Sir:

Your request for an opinion dated January 31, 1936, reads as follows:

"Please note the enclosed letter from the superintendent of State Hospital #1, Fulton.

"It has been my understanding that osteopaths have had the same standing under the law as ordinary physicians, but I may be mistaken.

"In order that our superintendents may be on safe ground will you kindly let us have an opinion from your office with reference to the question brought before me by Dr. Ralf Hanks, superintendent at Fulton, and oblige."

The attached letter from the Superintendent of State Hospital No. 1, reads as follows:

"The County Physician of Montgomery County is an osteopath and quite a number of commitments from that county are signed by him and by no other physician. I should appreciate it if you will get an opinion for us as to the legal status of this. Whether or not an osteopath has a legal right to sign these papers."

Section 8646 R. S. Mo. 1929, provides that in a proceeding by a County Court to determine the sanity of a county patient one of the witnesses in attendance must be a physician, thus:

"At the time appointed, unless the investigation shall be adjourned over to some other time, the said court shall cause the witnesses in attendance to be examined before themselves, or a jury, if one be ordered for the purpose, duly chosen and impaneled, according to the practice of the court. At least one of the witnesses examined shall be a reputable physician."

It is noted that when one, adjudicated as insane, is delivered to the State hospital it is the duty of the Superintendent to receipt for said person and treat him as a patient.

In ex parte Griggs 214 Mo. App. 304, l. c. 306, 248 S. W. 609, the Court said:

"On the mere statement or declaration of the physician of the Industrial home that she is of feeble mind, she has been transferred to the Colony for the Feeble-minded and Epileptic there to be kept 'until restored to reason.' No inquiry was had or adjudication was rendered finding her to be of feeble mind. Nor was any opportunity afforded her to be represented at any hearing. \* \* \* \* We think her confinement in the institution at Marshall is without authority of law."

In the case of State ex rel. Varnell, v. Cole County, 80 Mo. 80, l. c. 83, the Supreme Court said:

"The fact that McGirk, then a citizen of Cole County, was placed in the lunatic asylum in July, 1880, as a pay patient, is not controvertible, and in no way dependent on the question whether his sanity at the inquest of lunacy was tried by six or twelve jurors. While such a question might affect the regularity of the action of the probate court in appointing a guardian,

it cannot affect the fact that he was confined in the asylum as a pay patient, nor the fact that he was subsequently, by the order of the county court, made a county patient. We will, therefore, in the disposition of the case, consider the order as being sufficiently efficacious to make said McGirk a county patient of Cole county from the time it was made."

CONCLUSION.

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We are herewith enclosing an official opinion of this Department rendered September 20, 1935, to Honorable Davis Benning. In said opinion this Department held that an osteopath is a physician within the sense that the term "physician" is used in the County Hospital Act. The same statutory construction is again applicable in the statutes relating to adjudication of insanity, where the term "physician" appears. Nothing in the Eleemosynary Act prescribes the school of healing to which said physician must profess, and it is not for this Department to construe said term "physician" to the exclusion of a physician licensed to practice osteopathy in this State. When the Legislature made it possible for osteopaths to hold the office of county physician, it would be repugnant to the intention of the Legislature for us to say that an osteopath is not a physician intended to perform the physician's ministerial duty at an insanity inquest. The Grigg's case, supra, holds that the physician's report is but a mere statement and no part of a legal inquest.

As in State ex rel. Yarnell, supra, it is presumed that the County Court followed the procedure prescribed for the adjudication of insanity, and that its warrant of arrest and commitment was issued pursuant to legal adjudication, and was sufficient to make said patient a County patient of Montgomery County from the time it was made. When a patient is delivered pursuant to the statutory warrant, it is not for the Superintendent to review the sanity proceedings, but it is the duty of the Superintendent to receipt for the patient as the statutes provide, and said patient may be discharged by him, when in the Superintendent's opinion the reason is restored.

Hon. W. Ed. Jameson

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February 20, 1936.

The fact that an osteopath was used as a witness in the inquest, and filled out the statutory history of the case, and that no other physician was used as a witness to note the history, as detailed by statute, in no way alters the duty of the Superintendent to receipt and take legal custody of the insane person.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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