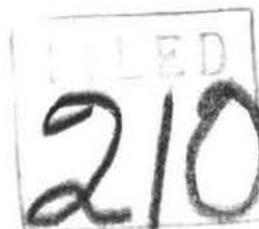


June 5, 1962



Honorable Francis Toohey, Jr.
Prosecuting Attorney
Perry County
Perryville, Missouri

Dear Sir:

This is in response to your letter of May 7, 1962, requesting an opinion from this office on the questions as set out below:

"1. May a County Hospital Board deny to a Doctor, who is licensed to practice in the State of Missouri, authority to practice within its hospital where it has reason to believe that said Doctor is incompetent in the prescription of medicine.

* * *

"4. May a hospital staff which has admitted a Doctor to the staff subsequently dismiss said Doctor from the staff for incompetency and if he is not on the staff may the doctor be denied the privileges of the hospital?"

You have also requested answers to questions numbered 2 and 3 in your letter which we respectfully decline to consider as we have no authority or responsibility to furnish answers to questions concerning the stated individuals' liabilities.

In answering questions numbered 1 and 4, I am enclosing a copy of an opinion dated July 19, 1961, from this office to the Honorable T. E. Lauer, Prosecuting Attorney, Callaway County, Missouri, relative to the authority of county

Honorable Francis Toohey, Jr.

hospitals to regulate the practice of doctors therein. I believe that a study of that opinion along with a reading of the case of Albert vs. Board of Trustees of Gogobic County Public Hospital, Michigan Supreme Court, 1954, found at 67 N.W. 2d 244, which was decided under a statute substantially identical with our statute Section 205.300, providing that the patient shall have the absolute right to employ his own physician and that the physician shall be in the exclusive charge and control of the care and treatment of such patient, will provide the answers to questions 1 and 4 above. The court in the above case stated that the equivalent to our board (the State Board of Registration for the Healing Arts in the State of Missouri) had the exclusive control and charge of the licensing and qualifications of physicians within the state and that the county hospitals could make no rules or regulations which would infringe upon this right. Especially is this so in the present case since from a perusal of the bylaws of the Perry County Memorial Hospital it appears that they are completely lacking in any rule and regulation (applicable to all physicians and surgeons practicing within the hospital) touching this subject. We do not here state whether a bylaw of the hospital regulating the prescription of medicine in a case such as you have outlined would be reasonable as to come within the enclosed opinion and cited case, as this is a fact situation and each case must be decided individually.

Hoping that the above will adequately answer your inquiries, I remain

Yours very truly,

THOMAS F. EAGLETON
Attorney General

Enclosure

RN:BJ